

Legislature

52 of 1913
S. No. 14-13

310

File No. 52- 13

Serial Nos. 1, 4 to 13

1903-14.

GENERAL AND REVENUE SECRETARIAT.

(Legislative.)

Part A: Manuscript
for March 1918.

■ Introduction of the Transfer of
■ Property Act, into Mysore.

Serial Nos. 1, 4 to 13.

■ on the Manager, Bank of Mysore.
■ Dated 15. 5. 1914.

■ requests the Govt. to introduce the
■ Property Act into Mysore and to
■ issue of Sec: 59 para 3 to Bangalore.

has Chief Court

0-20-5-06.

■ No 3 D. 30. 19. 1914

■ of the Chief Court on the
the provisions of Sec 59

of the Transfer of property Act. a ~~new~~
thought the State and whether it can
be legally done here.

5) From the Registrar Chief Court of Mysore.

No 3263 Dated 21. 1. 1911
213

Forwards the opinion of the Judges of
Chief Court in the matter

6) To the Hon'ble Col Sir Hugh Daly
Resident in Mysore

D.O. No 3582 D/4. 12. 1915.

Forwards a Copy of the Transfer of property
Bill with the Statement of objects and reasons
and states that the Bill be placed before
the Legislative Council.

7) From the F. A. Resident in Mysore
D.O. No 9169 D/15-12. 1915.

Informes that there is no prima
objection to the Bill being placed
Legis Council and suggests - Cer
in Sec. Corresponding to Section
Indian Act.

8) To the Registrar Chief
No 2513 D/1

Forwards a Copy of the
and calls for opinion of
Court on the amendments
Select Committee

GENERAL AND REVENUE SECRETARIAT.

(Mys)

NOTES.

File No. 521

FILE HEADING.

Introduction of the Transfer of Property
Act into Mysore

From

The Manager, Bank of Mysore

No. G 1/110

Dated 15/5/14

Received 18/5/14
29/5/14Diary No.
93900

Enclos. — Spare Copies. —

Serial No. 1

BRIEF ABSTRACT OF LETTER.

Requests the Govt to introduce the Transfer
of Property Act into Mysore and to apply ^{the} provisions
of sec: 5-9 & para 3 to Bangalore and elsewhere

NOTES AND ORDERS.

SUBJECT No. 42.

- (a) Upholding the doctrine "once a mortgage is always a mortgage" or introduction of Transfer of Property Act into Mysore.
(b) Conditional sale.

(a) Mr. S. Ramanna, Hassan municipality.
(b) Mr. M. Subba Rao, Hassan District Board.

Summary of discussion.—(a) The equitable doctrine "once a mortgage is always a mortgage till the same is determined by act of parties or by order of Court" is the law as administered in British India for a long series of years even before and after the introduction of Transfer of Property Act in 1882. In all mortgage transactions the same principle has been followed and acted upon by the people hitherto in our Province.

But the recent decision of our Hon'ble Chief Court of Mysore in Venkataramaiya *vs.* Amba Bayi reported on page 136 of XVII, Chief Court Reports, Mysore, is to the effect that no such law exists in Mysore. By reason of this decision, if a mortgagor makes a stipulation in the deed that he would redeem the mortgage within a time and fails so to redeem the property covered in the deed,

may be considered as sold for the mortgage debt, the mortgagor cannot redeem the mortgage. The lender will have the upperhand and the debtor may lose all his property for a small debt. So, it is prayed, that the Transfer of Property Act, of 1882 may be introduced into the Mysore State.

(b) Though the Transfer of Property Act is not in force in Mysore, its principles are being followed here in several instances. Conditional sales which were hitherto not in force and which are never enforced in British India up to this day, are being now enforced in the courts of the Province since the decision of the case reported in Mysore Chief Court Reports, Vol. XVII, page 136. The stipulations as regards conditional sales in mortgage deeds, if allowed, will become very oppressive to the poor and will deprive them of valuable properties for very low sums. It is therefore submitted that the law in this respect in Mysore should be brought into conformity with that obtaining in British India as laid down in the Transfer of Property Act, and all clog on the equity of redemption removed.

Reply of Government.—Will be considered.

H. Luis 148.

REPLY.

Office of the Dewan of Mysore.

(To be written on this margin.)

NOTE.

Dated.....30th July.....1914

DIARY No. 8393
13/4/1914
SECTION *Regis*
FILE No. 52-13
SERIAL No. 836

Letter dated 29th July 1914 from Dewan Bahadur K. P. Puttanna Chetty explaining why a large balance has accumulated in the Bank of Mysore and asking for an early disposal of his references of May last, suggesting remedies for the same.

2)

Copy of the above is forwarded to the Financial Secretary for favour of early action.

3) The papers may kindly be shown to me.

*How much need as immediate
51.7.14*

Rb

30-7-14

Sumd. The two letters referred to by the K. P. P. are herewith put up. These will be worked up in the III room, after their return.
8/8/14
I'm up and note giving all the previous references to this subject.
8/8

Serial
No.

Flag V
Legis 37-09

~~Serial~~ Page 7 of the
notes of Legis 37-09

Para 3 1/2 Page 8 of the notes
Flag V.

Page 2 of the notes to
this file.

Flag S.

- 4) Subd. The Subject had come up in 1906 and 1909 and the then Chief Judge Mr. Ismay was ^{to be} not in favour of the introduction of the Act into Mysore as it would introduce undesirable technicalities into our simple law of mortgages. The ^{present 1st member} ~~then~~ then ordered that the question of the introduction of the Transfer of Property Act into Mysore may ^{be} taken up after the new C. P. C. was in force for one year, after obtaining the views of the Chief Court. The question again came up before the R. A. in 1913 when the Govt replied that it would be ~~taken up~~ considered.
- 5) There is also another letter from the Manager of the Bank of Mysore which Mr. II has transferred here. That letter is about requesting the Govt to allow the Bank of Mysore to accept land on the security of immovable property. This is a matter to be dealt with in Mr. II alone. May that letter be returned ^{after being seen by the Secy} to Mr. II, and the Chief Court be requested to give their opinion.

Serial
No.

on the proposal to introduce the
Transfer of Property Act into
Mysore and the application of para
3 of Sec: 59 of the Act about
"Equitable mortgages" to ^{the city of} Bangalore.
The Dewan has ordered that the
papers may be shown to him.

S.V.S.
CH (48) 6 dated with reference to last sentence in p.
11/8/14 M.L. n.n. to 2/8

7) The chief ^{Court} may be consulted
unofficially ~~with~~ in the matter, having
regard to the note given First Member
at p 34 in legislation file no 37.

8. Lu?)

G. Swinmore 17/8

8. First member)

Dewan of Mysore
19/8

9. Please consult by letter. 9/8/14
Let me see draft please -

19/8/14

H.V.N. 20/8

10. Draft may be put up at once

11.

Subd. with a draft letter to the
Chief Court.

CH (48) 9 M.L.
20/8/14

Legis File No. 52 of 1913-14

21/4 ✓ 6

Serial
No.12. Disapproval
Dist. memb.

22/8/13

13. The last part as it stands has no meaning. The proviso can hardly validate such mortgages ~~to~~ (or liens) unless they were valid by ~~law~~ already by other law or usage.

Please let me see Act VI of 1904 which introduced Choulmein, Bassein and Akylab into this proviso, and the Leg. Cl. procs connected therewith.

Legis 21/8

H.V.N. 
22/8/14

21/8

14. Submitted with the Gazette containing the discussion in the Legis. Cl. on the Transfer of Property Act Amendment Act, 1906. The question of the applicability of the principles of equitable mortgage in Alipore has been discussed in the Legis 6-13 herewith put up.

Flag W

S.V.S.
CL (48) 22/8/14
23/8/14

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No.

15. If approved, the last ~~sent~~ part of the draft will be altered as follows: "and also of applying the provisions about equitable mortgages to the city of Bangalore."

16. The following points are also submitted for consideration.

1. As observed by the Hon. Advocate in his file 6-13, there is no law forbidding the creation of such a mortgage in Mysore, nor is there any decision of the Chief Court that such mortgages are invalid.

2. "Such mortgages were prevalent both in the Presidency towns & the mofussil before the passing of the Transfer of Property Act & there was no difference between the law in the mofussil that prevailed in the Presidency towns." (H. G. R. S. 12, p. 121).

The portion of the Select Committee's report quoted at p. 703 clearly shows that in spite of the prevalent practice, the Law Member's opinion must have prevailed as regards the

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~~provisions~~ applicability of the provisions therein
not found.

- 3) The two important requisites for the
creation of an equitable mortgage are:-
a) the deposit of title deeds
b) an intention to create a security thereon

after the passing of the Transfer of Property
Act, in British India, all mortgages
should be by registered instrument
if the amount secured is Rs 100 or up-
wards. But in Mysore, in the
absence of any such enactment,
even now an oral ~~agreement~~ mortgage
may be agreed upon if the title
deeds are deposited, all the conditions
required for the ~~fulfillment~~ completion of an
equitable mortgage will be fulfilled.
A formal instrument in such a case
is considered unnecessary. Though
the point was not expressly decided,
it seems to me to have been referred to
in Civil Revision Petition 52 of 1907.

H. S. X

G. V. Narasimha Murthy
27/5

List Member)

See 1. with the record in
the Civil Revision Pet. 52-07
drawn up from the Chief Clerk
NOTE—Contn. sheet.

6/6/14

31/7/14

General and Revenue
Secretariat.

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(7) ~~to~~ I am not inclined to attach much weight to the passage in Gove's Tr of Br Act, ~~unless~~ unless we can discover something to support to his opinion in some of our decided cases. The Ch. Ct case shown to me refers only to the validity of an oral mortgage.

(8) But whatever it is, the opinion of the Ch. Ct may be obtained. Please draft the letter in more detail giving the course of opinions on the question; and also on the point whether any special legal proof may be introduced to recognize or validate mortgages by ^{mere} deposit of title deeds made in the City of Bayamore if not throughout the State.

NOTE—Contn. sheet.

5/9/14 ⁷¹⁹

H. V. N.

3900 393 762 10

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(9) Please put up drafts.

20) Subd. with a draft to the Chief Court.

CH (48)
17/9/14

Second
Last Member)

21) Draft approved by the 2nd member

26/9/14

CH 719

22) Issues

CH 29942

Subd.

By Comp No of 3 dated 30/9/14

To the Registrar, Chief Court

Calls for the opinion of the Judges
of the chief court on the advisability
of extending the provisions of sec: 59 para 5
of the Transfer of Property Act. to
Bangalore if not throughout the state
and whether it could so be done here

Subd.

23) Reply from the Chief Court has
not been received. A draft & o.
reminder is put up.

CH (48)
12/12

24) Issues

CH 24174

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No.

Remr issued no of 1814 dated 14/12/14
to the Registrar, Chief Court of Mysore
Bangalore.

5 No 3263 dated 26th Jan: 1915
from ²¹³ the Registrar of the Chief Court
of Mysore

of the forward the opinion of the judges
Chief Court in the matter.

Submitted

(38)

1/2/15 26) The opinion of the Chief Court is practically
for the introduction of the Transfer of Property Act,
with necessary modifications especially in the first
50 sections. They suggest that a committee of
lawyers, landholders, Bankers may draft the Bill.

27) If approved, a draft Bill ^{may} be prepared
and the opinion of the leading lawyers, landholders
and Bankers ^{may be} called for. Before placing the Bill before
the legislative council, their opinion may with
advantage be utilised.

28) The Chief Court do not commit themselves
to any definite opinion on the question of the
validity of the equitable mortgages in Mysore.

G. Srinivasa
27/1/15

First Member

9) I think that the bill may be

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framed here first and then placed before the Leg. Cl. The Select Committee will of course scrutinise it. Before going to the Leg. Cl., we may get opinions from the Chief & Dist Judges and from others. Please let me have a preliminary draft soon — say 3 weeks.

H.V.N.

3/2/15 Due 4/2
Dm. Har Singh Rao.

30) Please put up 2 copies of ^{2 P.A. in} ~~the~~ ^{of} India ~~code~~ ^{edition}

28
4/4/15

31) 12 copies of the J.P.A. G. of India code has been ordered for (vide Lys 7-14-51).

CL (38.)
6/4/15

C R. S. 12]

General and Revenue
Secretariat.

Legis File No. 52 of 1913-14

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32) A draft Bill with a draft statement of objects & reasons is submitted for approval or other order.

33) The only material alteration proposed is the numbering of 69 in the Act. In this state, there is no practice whereby a mortgagee can sell without the intervention of the Court. It seems therefore unnecessary to introduce any new principle and create unnecessary anxiety in the minds of the public.

34) The numbering of the Sections is retained as it will be conducive to for facility of reference.

G. S. V. M. S. J. J. J.
24/8

First Member)

35) Please see Pencil Notes in the Copy of the Act & Note further.

H. V. N.

3/9/14

Dec 4/9

36) 546. The original Bill will be referred to and if the illustration cannot be based on actual decisions, necessary corresponding local

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namy will be used.

S. 5

37) S 54. This seems to be a very important provision. "In enacting S 54 it was the intention of the Legislature, by means of compulsory registration to minimise as far as possible the chances of litigation and to reduce the opportunities for perjury in connection with sales of immovable property" (29 Madras 336 at 344). Under the Registration Regulation, whenever a sale is made by means of a document, it should be registered when the value of the property is of the value of 1000 upwards. But oral sales do not come within the scope of this law. It seems also necessary to have the system of transfer of immovable property as one of public transfer. Sir Richard Garth is reported to have stated: "It would be the means of preventing a vast amount of fraud and litigation and would be a great blessing to the whole community and especially so to those who want security and protection most, namely the poor and more ignorant classes."

38) In the Representative Assembly also, the members have been repeatedly pressing for the amendment of law in connection

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with the provisions of this Section.

39) S. 59. The draft proposed is suitable and will be adopted in preference to the 3^d clause of S. 59 in the British Indian Act.

40) But I ~~would~~ submit that the existing law does not prohibit the creation of equitable mortgages even now. In 17th & 252, the Judges held that up to July 1882 (when the Transfer of Property Act came into force) there was no difference between the law in the Muzfarsal and that prevalent in the Presidency towns as to the validity of a mortgage created by a deposit of title deeds with a creditor with intent to secure a debt. The law here does not appear to be different from what it was in British India prior to the introduction of the Transfer of Property Act.

41) S. 69(a). This clause may remain as it is. It only allows a simple mortgage as such to bring a suit for sale but not a suit for foreclosure. Foreclosure by impleading is allowed only in cases of mortgage by conditional sale and English mortgages.

This is also the opinion of
Dr. Ghose & Co. 88.

Lajis

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These expenses
are beside
the point.
How far are
these kinds in
practice here?
Is no change re-
quired acc. to
locally prevalent
customs? This
will be considered
at Com. Kaye.

42) In a usufructuary mortgage as such
there is no covenant to pay, there is no right of
~~sale~~ and no right of foreclosure as there is also no
~~time~~ fixed for payment. The mortgagee has to look
to the rents and profits for the satisfaction of his
advance.

43) Similarly, as there is no covenant for
payment in a mortgage by conditional sale, the
mortgagee has no right of sale.

44) It is only the English mortgage who
has ~~both~~ the right either to foreclose or sell
the section merely gives expression to these definite
principles.

45) S. 69. As I have already ~~observed~~ noted, this
Section seems unnecessary and may be
omitted. ~~no~~ No case appears to have ~~been~~
been dealt with in our courts in which the
validity of the English mortgage was in
dispute. The difference between an English
mortgage and a mortgage by way of
conditional sale is not much, and
in fact, a mortgage in English form between
Hindus of lands in the mofussil outside
Calcutta is said to be treated always by
the courts as a mortgage by conditional sale.
(12 Calcutta 614)

G. R. S. 12]

General and Revenue
Secretariat.

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(46)

Why define the term
which is not further
used in the Regn?

I agree -

"Where property is such
as is usually insu-
rable & against de-
struction by fire" ?

May remain

The only doubt is whether the English Coffee
planters have executed any mortgages in English
form. The existence of the definition in the Act
will not materially affect the position, since
all the other provisions are practically the
same. In fact mortgages. But Section 49 gives
special powers, which it is inexpedient to grant
as there will be no supervising the Court in
the exercise of the power. So the Section may be
omitted.

(47) 572. Property by its nature insurable means
"such as godowns, buildings and other property
liable to destruction by fire. Land and other
similar property which is not liable to
destruction by flood or deluvion do not fall
into the clause as their liability to destruction
is too remote to necessitate legislative protection
(Hans. p. 385).

(48) The Section is said to have been taken
Verbatim from an English Act.

(49) 591. All the Sections scored out
except 599 are to be found in the Civil
Procedure Code. 599 of the Transfer
of Property Act was repealed and
new Section is now inserted in the British India

F. R. S. 12]

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Code as order XX XIV Rule 14. This Rule was not introduced into our Code on the ground that it was not suitable and would create difficulty. It is properly a provision which ought to be in a code of procedure rather in a code of substantive law. The rule as now enacted in the Civil Procedure Code will be introduced in our Code as that is its proper place.

Mort. by Cond. Sale
is all right & may
remain. May not
'English mortgage' be
substituted by "Possessory
mortgage"? This may
be inserted, I think.

50) S. 98. Although five classes of mortgages
are mentioned in S 98, it seems necessary
to state a general rule as to how the ^{rights relating to} other
classes of mortgages are to be settled.

51) Mortgage by conditional Sale are very
common in the State, and a number of cases
have come up before the Courts also.

(Vide the latest case of Jagan Mohan V Thimmamangala
Gowda XX Ch. Ct. Rep. 87).

52) S. 122. Gift is not defined in Contract Act.

53) S. 123. The Hindu law in this respect will
be no doubt altered by the introduction
of this principle. But possession ~~is~~
insisted upon as one of the essentials of a
transfer on account of its publicity and formality.

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The High Court consider that the certainty, publicity and formality which attend delivery of possession are at least as well secured by a registered and attested instrument."

54) ^{There} ~~It~~ seems nothing objectionable in adopting this principle.

55) S 130. This Section does not apply to the transfer of a marine or fire policy of insurance because Section 135 contains a special provision for such policies.

G. Sri mura *[Signature]*

28
8/9

First member)

56) The file may be circulated as an urgent measure & the ~~Page~~ draft may be introduced at the next meeting - *[Signature]* H.V.N.

9/9/15-

Not Secy's order
Note: This amendment will have to be considered and sent up by the Rules Committee. The Chief Commr will have to be advised on the point.
[Signature]

7)
Further note by the First member is in the next page - *[Signature]*
10/9/15

G.R.S. 13]

Ley's 52-13.

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

(5-8)

Mr. Rose of the Clydesdale Bank spoke to me about the need for introducing the power about equitable mortgages soon in the interests of the business of the bank. He seems to attach importance to it chiefly on the ground that it would give a power of sale without going to Court. This however ~~is~~ (I told him) would not follow as we are not intending to allow power of sale at all.

59. The question is one that has to be fully considered in all its bearings. The bill will raise it ~~by~~ fairly by introducing Para 3 of S. 59 as at present intended.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

H.V.N.

H.V.N.
10/9/15 *sum 10/9*

G. R. S. 12]

General and Revenue
Secretariat.

Legis File No. 52

of 1913.-14

Serial
No.

1368
11.9.15
with Rev. Reports
A.T. of P. act.

Drawn) 1

6058) Please circulate & return with a copy

with 2 Submission.

27-9-15

to M.V.

61
(59) c.s.
dis. fa.
dis. 28/9
ar

62 It will not be a day to run
to introduce the Bill at the ~~present~~ ^{next}

NOTE—Contn. sheet.

GPB-20,000-30-6-15

1/10 well
M.K.

NOTE—Contn. sheet.

GPB-20,000-30-6-15

No. C. / 82 / Que 7 books.

..... 1. 6 1915.

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

SUBJECT.
(Clause ii of the Schedule).

Introduction of the Transfer of Property Act into Mysore.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

D. M. Narasimha Rao.

Secretary to Government.

..... 28th September 1915.

Extraordinary Member of Council. *Opinion recorded by the Extra⁴ member*

First Member of Council.

Opinion recorded by the First member
of Council.

Second Member of Council.

*Opinion recorded by the Second
member*
9/11/16

G. R. S. 12]

General and Revenue
Secretariat.

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No.

(63) I agree

Qmas
11.10.15. Dec 11/10

Porter Es 11/10

(64) Submitted for order with a

draft submission note

Es 28/10

mit

Legis
10/11

Sembany
(Dewan)

Due ag Naw
2/11
Es 2/11

2228
2.11.15

721 10/3

237

G. R. S. 12]

General and Revenue
Secretariat.

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No.



Public Office
9 Nov 1915.

Dear Mr. Hansing Rao

~~65)~~ With reference to
the accompanying file relating to the
Transfer of Property Act the Dewan
observed that he would be obliged if
it is sent up with the usual Final
note

~~65)~~ Draft submitted with
First Member's order

Yours Sincerely
Deviyamma

~~67)~~ Draft Final note is submitted
for favour of approval

11/11

First Member/
Final note appd. and signed by First
Member is put up.
12. 11. 15. 13/11

G. R. S. 12]

General and Revenue
Secretariat.

Legis File No. *52* of 191 *3-14*

Serial
No.

(69) Draft Submission Note is submitted
for approval.

ss
15/11

init

Su 11/
Dewan

Donee app No
19/11

2564
19.11.15
with a book

Final Note by the First Member of Council.

Subject:—

Introduction of the Transfer of Property Act into Mysore.

64 The question of introducing the Transfer of Property Act (IV of 1882) into Mysore was mooted in the Representative Assembly in 1906.

65. 2. The Judges of the Chief Court were then of opinion that the Act should be introduced into Mysore and steps were accordingly taken to draft a Bill for the purpose.

8 of office notes
(no 32-09)

66. 3. But in 1910 when the question came up again before the Representative Assembly it was ordered that the Bill -- should be taken up after the Civil Procedure Code had been -- in force for about a year and after obtaining the views of -- the Chief Court.

67. 4. The question was again urged in the Representative Assembly of 1913. The Directors of the Bank of Mysore also requested Government to introduce the Act and to apply the ~~provisions~~ ^{provisions} of para 3 of section 59 thereof re " Equitable -- mortgages " to the City of Bangalore. The Judges of the -- Chief Court were thereupon consulted and they are of opinion that the provisions regarding sales, leases, mortgages, -- gifts, actionable claims, exchanges and portions of the -- earlier part may be introduced with advantage, possibly with some modifications and that the provisions of the third -- paragraph of section 59 of the Act may be tried in Bangalore and if necessary it may be enacted positively that equitable mortgages shall be valid in Bangalore.

*J. K.

68

5. The draft Bill has accordingly been framed on the lines of the British Indian Act, IV of 1882, and has been approved by the Members of the Council.

69

6. His Highness's sanction is required to place the Bill before the Legislative Council.

H. Manjundayya

Dated 12th Nov. 1915 First Member of Council.

Submitted to His Highness.

Ref I.

70' I submit herewith a Final ^xNote by the First Member of Council regarding the introduction of the Transfer of Property Act into Mysore and solicit His Highness's approval for placing the ^xBill before the Legislative Council.

x K.

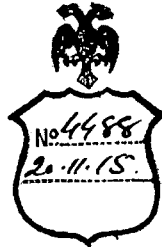
80

M. Y. 2710224

28th Nov. 1915

Record of Cases submitted for the Orders
of His Highness the Maharaja

Subject.



Permission to place before the
Legislative Council the Transfer of
Property Bill.

467

Order.

71. KRM
25/11/15

72. Sentary

26.11.15.

over 16/4

h6

73. Draft 15/11/15

27/11

2443-14

(27)

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74)

Subd. with a draft to the Residency.
The copy of the Bill for the Residency
is also put up. That has to be attested
The draft has to issue from the
Dewan's Office.

30/11/15

75) Submitted for favour approval
13
1/12

Secretary
(Dewan)

Dy. Secy
2/12

2785
2.12.15

1/12/15

76) The draft approved by the Dewan has been
issued and placed on file (vide D.O. No. 3582 dated 4.12.15)

6.12.15

6/12

6/12

6

To

Sir The Honble Col, Sir Hugh Daly
Resident in Mysore.

D.O. no. 3582

4.12.1915

Forwards a copy of the Transfer of Property
Bill with the statement of objects and reasons
and states that the Bill will be placed
before the Legislative Council.

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No.

7. No. 9169 dated 15th December
from the F. A. Resident in Mysore
to the Dewan of Mysore

Informs that there is no *prima facie*
objection to the Bill being placed
before the Legis. Council and suggests
certain amendment in sec: corresponding
to section 100 of the British Indian Act
Act: Secy's orders thereon

))) "Please put up file"

Intd G.S. 16/12

Subd. with the file and a copy

of the British Indian C. P. C. 1908. ^{the following portions in the I. P. A. 2} D

IV Sch. of that code has repealed, ^{the following portions in the I. P. A. 2} sec:

85 to 90 inclusive, 92 to 94 inclusive, 96, 97

99 and in sec: 100 the words "and all the

provisions hereinbefore contained as to a
mortgage instituting a suit for the sale of
the mortgaged property." In the draft

Bill Secs: 92 to 94 inclusive, 96, 97 and 99
have been omitted but the words

referred to in sec: 100 were left as they
are perhaps by oversight. No reference to

~~of~~ this is to be found in the notes.

17/12/13

Rev. 287

The words 'and all the provisions
hereinbefore contained as to a

Page 468 of Vol. II of the
unrepealed Acts of G. S. in
Council (IV Sch.).

G. R. S. 127

General and Revenue
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mortgagee instituting a suit for sale of
the mortgaged property shall, so far as may be,
apply to the person having such charges; ought
to have been omitted in the Draft Bill, but my
mistake, it was not so omitted. If
approved, they will now be removed. Provisions
similar to those words are now contained in
the Civil Procedure Code (III 194) or XXXIV
R 15. No application sums necessary to
the Registry.

Eg
18/12

First Member)

all right

21/12/13

H. H. H.

28/12/13

Eg
28/12/13

1691-5

G. R. S. III-2]

General and Revenue
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80) ~~Subv. The Bill was~~
Leave to introduce the Bill
was granted by the Legis. Council
on 17/2/16 ^{28/1/16} and the Bill was
read and referred to a select
committee on 28/4/16.

The Report of the Select
Committee has been published.
~~and~~ The late second member
(Mr K.S. Chandrasekhara Aiyar) has
ordered that in view of the
importance of the measure and of the
changes made by the Select
Committee therein, that the
opinion of the Chief Court may
be invited.

A draft to the Reg. Chief Court
is accordingly put up.

CH
11/1/17 (81) Some of the amendments recommended
by the Select Committee are of far-reaching importance, and
have no parallel in the British Indian Act. The late second
member (Mr K.S. Chandrasekhara Aiyar) has used a paragraph
22 of the Notes in Legis File 18 of 15 that in view of the importance
of the measure and of the changes made by the Select Committee
therein the opinion of the Chief Court may be invited. A
draft calling for the opinion is submitted for favour of

Flag N

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No.

approval or other orders.

Ss
11/1

First Member) 82) aff. v. 12/1

Ss 12/1

Ss

14/1

1413
12.1.17.

Ss A

8

To the Registrar Chief Court

no 2513

16-1-1917

Forwards a copy of the Transfer of Property Bill and calls for opinion of the Judges of the Chief Court on the amendments recommended by the Select Committee.

9

No S. G. S. 773 dated 21st Feb: 1917

From the Registrar, Chief Court of Mysore Forward the Opinion of the Judges of the Chief Court on the Report of the Select Committee on the Transfer of Property Bill.

83) Ss W

3/3/17

84) There are 4 important suggestions made by the Chief Judge on the amendments of the Select Committee for the consideration of Government. The first is that relating to the amendment of S. 14. His criticism on this Section is that the amendment made in S. 2 and S. 14 being couched in negative terms, would.

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not be sufficient by themselves to confer a right not given by the Hindu law." If the Hindu law as expounded in Mysore does not make a transfer legal which creates an interest in an unborn person this Section even as amended does not legislate it." It accordingly suggests the enactment of a separate Regulation on the lines of the recent British Indian Acts, and the retention of the present amendments until such a Regulation is passed.

85) The amendment proposed by the Select Committee is clearly open to the above criticism and requires modification if the object of the Member is to be completely fulfilled. In this connection it may be pointed out that in the Bill originally published by the Imperial Legislative Council, the language used was in positive terms thus "It shall be lawful for Hindus and Mahomedans to make dispositions of property for the benefit of unborn persons, subject to the limitations hereinafter contained." This language was subsequently given up, as it was feared that the extent of the testamentary power might be affected by the Bill as it was worded. Hence the provision was put in a negative form thus:—"no disposition of property by a Hindu, whether by transfer inter vivos or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition."

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86) If approved, the following clause may be substituted for subsection 2 of S. 14: "Subject to the limitation specified in subsection 1, no transfer inter vivos of property by a Hindu shall be invalid by reason only that any ~~portion~~ person for whose benefit it may have been made was not in existence at the date of such transfer." This modification if accepted, will not necessitate the passing of a separate Regulation and will not be open to the same objection as the present one. It can be moved as an amendment to the Bill at the next meeting.

87) The second and most important criticism of the learned Chief Justice about ^{paragraph 2 of} S. 59 of the ~~draft~~ Bill. The paragraph relates to what are known as equitable mortgages. The mortgages known as equitable mortgages in British India and England are created in certain Presidency towns by the deposit of title deeds with the mortgagee without any formal document or registration. The Select Committee appointed to consider the Drafting of Property Bill considered that ^{some} special facilities should be afforded to the Banking Companies registered under the Joint-Stock Companies Regulation in the matter of loans on the mortgage of immovable properties. They did not like to adopt the principle of equitable mortgages to its fullest extent, as they considered it highly prejudicial to the interests of the subsequent bona fide mortgagees or purchasers. The Section was accordingly drafted as

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printed in the Report of the Select Committee.
The criticisms of the learned Chief Judge on this
question ~~may be~~ ^{are} briefly these:-

1. Mortgages by deposit of title deeds are neither
desirable nor necessary even in the case of banks.
If they are not wanted in Delhi, Calcutta, Jubbulpore,
Madras, Lucknow, Patna, they may not be
necessary for Mysore or Bangalore.
2. There may not be sufficient demand for this
kind of security.
3. There is a great simplicity in requiring all
mortgages to be registered.
4. If facilities for registration are necessary for the banks,
a registering officer may be appointed at the
Banks' Office on a fixed day or days in each week.
5. a. Under the clause as framed by the
Select Committee, a mistake in the trans-
mission of the note may cause serious
troubles to the party regarding the validity of the
mortgage.
b. Registration by post may lead to great troubles.
c. It may be a condition of priority instead of the
validity of mortgage.

88) on the whole he does not
seem to ^{view with} favour the introduction of this kind of
mortgages into the State. It is, therefore, a point
for order whether the clause may be set aside or

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completely removed from the Bill.

89) The third suggestion refers to S. 81 in regard to the marshalling of Securities. He approves the principle of the amendment made by the Select Committee but has suggested an alternative draft as being more precise. The draft proposed by the learned Chief Judge seems to be to be preferable, and may be adopted.

90) Lastly he prefers to retain the words "or deposits its in Court as hereinafter provided" in S. 62 and justifies it on the ground that deposit and tender are not the same thing though they may have the same consequences. He suggests that words similar to them may be used in S. 60; ~~and~~ to meet the objection raised in the report of the Select Committee. The matter may not be of much importance. Either the amendment made by the Select Committee may be retained or that proposed by the Chief Judge adopted.

91) The other suggestions are purely clerical in nature and do not call for special remarks. They will be attended to in finally revising the Bill.

Submitted for forwarding orders

ES

7/17

42) The Bill does not amend or repeal any law

1938

36

General and Revenue
Secretariat.

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over which the Govt of India have control.
Their sanction does not appear to be necessary.

8

8/1

First Member)

93.

The report of the Select Committee was happily reported to the Chief Justice & his colleagues for favour of their opinion & the Committee's report is important one. The Chief Justice has only one objection to the several amendments proposed by the Select Committee and differs from them upon a very important provision of the Bill - viz. that one relating to what is known as "the equitable mortgage." According to the Mysore Bank authorities, it does not appear as if any other one has much interest in the retention of this provision. I understood that even the majority of the members of the Select Committee were not very particular as to the retention of this provision but as the strong representatives of the Bank of India & one or two other members interested in the Bank, they insisted to let the provision stand.

1094
12/9.

G. R. S. III-2]

General and Revenue
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93. The Govt. are persuaded in reply
this provision of the Bill, the report of
the ~~Joint~~ Committee, in the usual course
to place before the Leg. Council. It is
an amendment on behalf of 1912
and by the provision which can be
made. And I am fully confident
about its being carried, a large majority
in the Council.

94. The Bill may be introduced to a
large number of families, with the
purpose of the Government and Council
at a meeting of the Council.
This is not an item of the next meeting.

Bewari)

12/9/17

M. J. W.

95. I agree with the suggestion in para 94.

19.9.17

Rb

M. J. W.
2/91606
13.9.17

[To be used only for notes, requisitions, etc., not intended for permanent record.]

SL 10

8/17/17
Letter from Mr. W. C. Rose
re sec: 59(2) of the
transfer of Property Bill
is amended by the Select
Comm. The
96.
Subd. with a draft & v.
as directed

SL 11. In J 2175 of '9
to Mr. W. C. Rose
Informs him that he need
not take the trouble to see
the Chief Secy as the letter
explains the situation very
clearly.

SL 12. Letter dated 20/12/11

From Mr. W. C. Rose
Forward the proceedings
of the Conference of Indian and
Ceylon Chambers of Commerce held
in 1915.

97. Limestone
19/12/17

98. The letter has been issued and
the file subd.

20/12/17

99 Submitted.

(Chief Secretary)

100) I discussed ^{draft} the sec 59(2)
with the asst secy & at my
instance he met Mr. Rose & talked
the matter over with him. As a
result of the talk Mr. Rose has
written a letter which is
placed on the file. Mr. Rose is

N.B.—Should routine notes be written on small slips,
the notes must be copied, or slips pasted on this form.

39

G. R. S. III-2]

General and Revenue
Secretariat.

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Strongly of the opinion that the Section should be retained & the Bank is willing to take the risks involved ~~of~~ which are referred to by Leslie Miller.

101) In the Circs the provision may be retained.

1st member

est
21/12/17

102) I have no objn.

leek

21/12/17

SS 21/12

To the Council Seen
with ref^{ce} to para. 95

2350
21.12

40

Extract from the Proceedings of the.....438th.....Meeting of the Council
of His Highness the Maharaja, held at.....Bangalore,
on the.....24th January.....1918 .

17. Subject.-Clause ii of the Schedule.

Proposals for the amendment of the Transfer of Property Bill.

OPINION OF THE COUNCIL.

103 Clause 59 (2) of the Bill as amended by the Select Committee may remain. The other suggestions of the Chief Judge in regard to clauses 14, 60, 62 and 81 may be adopted and the following amendment may be moved on behalf of Government:-

1. In clause 14, the following shall be substituted for sub clause (2)

"Subject to the limitation specified in sub section (1) no transfer inter vivos of property by a Hindu shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such transfer."

2. In the first paragraph of clause 60, after the words "of the mortgage money", the words, 'or in deposit in court as hereinafter provided', shall be inserted.

3. In clause 62, sub clause (b), the words 'or deposits it in court as hereinafter provided'. omitted by the Select Committee, shall be retained.

4. For clause [80], 81, sub clause(1) the following shall be substituted:-

"(1) If the owner of two or more properties mortgages more than one of them to one person and then mortgages to another person one or more but not all of the properties already mortgaged, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property or properties not mortgaged to the second mortgagee so far as such property or properties will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in any of the properties mortgaged."

Sd. M. Visvesvaraya,
Deputy Secy to Govt.

"Extract"

C. K. Lalabhai
Chief Secretary to Govt.

1408

42

G. R. S. III-2]

General and Revenue
Secretariat.

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Serial
No.

104 to the Assistant Secretary, Branch III,
for kindly submitting the file to the First Member
of Council with a draft Final Note.

em
25/1/18
25/1/18

105
Subd. with a D.F.N. A.D.S.W. is also
put up.

em
26/1/18

Please put up a typed draft as received
26/1/18

Subd. with typed draft.

em
26/1/18

In favour of approval
26/1/18

2618
26.1.18

2nd Member

em

2nd final note signed by the Member
is put up.

em

28/1/18

Don submitted.

3976
29/1/18

Dewan

em
28/1/18
28/1/18

Final Note by the First Member of Council.

Subject:—

Proposals for the amendment of the Transfer of Property Bill.

The Report of the Select Committee on the Transfer of Property Bill was referred to the Chief Court for their opinion as some of the amendments made by the Select Committee were of importance and had no parallel in the British India Act.

The Chief Court made four important suggestions on the amendments of the Select Committee in clauses 14, clauses 60 and 62, clause 81 and clause 59 (2) for the consideration of Government.

Mr. W. Rose, Manager of the Bank of Mysore with whom the question of the necessity of retaining clause 59 (2) was discussed has written a letter strongly urging its retention and has stated that the Mysore Bank is willing to take the risks referred to by the Chief Court in their letter. The matter was discussed in Council and they are of opinion that clause 59 (2) of the Bill as amended by the Select Committee may be retained and that the suggestions regarding clauses 14, 60, 62 and 81 as detailed in the extract of the Proceedings of the Council, may be adopted and necessary amendments moved in the Legislative Council on behalf of Government. The resolution of the Council may be approved.

Page 40 of Office
Notes

28th January 1918.

Member of Council.

28.1.18

Submitted to His Highness.

*I submit herewith a Final Note by the...First...
Member of Council on the subject of...the...proposals
for the amendment of the Transfer of Property Bill
.....
.....
for His Highness' gracious approval.*

ch. 15 on marriage

Dewan.

384 Jan. 1968

C. 109

Record of Cases submitted for the Orders
of His Highness the Maharaja.

Subject.

Proposals for the amendment of
the Transfer of Property Bill.



866

Order.

~~KRM~~

31/1/18

Chij Santos

1-2-18 do

am 22/11

44/18

~~Graw~~
5.2.18.
19/6/2/18

W. J.

27.
2.2.18.

G. R. S. III-2]

General and Revenue
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No.

Subd. The amendments will be included in the final agenda for the meeting

2719
7.2.18.

6/2/18 Kk As the First Member who will be in charge of the Bill will not attend the meeting, this will have to lie over. If, however, the Govt Advocate is asked to move the amendments then the Bill may be passed at the next meeting & included in the agenda. Subd for passing orders

Es

7-2

First Member Govt. may be asked to move

Kk

6.12

Es

9/12

Subd. May the file be sent to the Govt Advocate for note of the First Member's orders and return.

6/2/18 Kk

Kk

Es

9/12

11408

G. R. S. III-2]

General and Revenue
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Subd. The Bill with the amendments
moved by the Govt Advocate on behalf
of Govt was finally passed by the
Legis. Council on 21/4/18. A copy of
the Bill as finally passed is put
up. The gracious sanction of
H. H. the Maharaja to promulgate
the Bill into law is required.
A d. f. n and d. p. n. are put up.

[Signature]
13/18 N.H.

Please put up typed draft as

word

2920
5.3

Typed draft is put up.

[Signature]
2/4/18
N.H.
4/3

In favour of approval.

8/10

8
2/10

Dist. Member

Fair Final Note signed by the First
Member is put up.

As.
4/3.

D.S. submitted

Drawing

[Signature]
5/3/18
N.H.

4675
6/3/18

Final Note by the First Member of Council

Subject:—

Promulgating the Transfer of Property Bill into Law.

U

The Transfer of Property Bill^{*} was finally passed by the Legislative Council on the 21st February 1918 with the amendments in clauses 14, 60, 62 and 81 moved on behalf of Government.

2. As important changes in the existing law and practice will be effected by the Bill (vide section 59) sometime is necessary before bringing the law into force and therefore the words "July 1918" are inserted in the 2nd paragraph of clause 1 of the Bill.

3. The gracious approval of His Highness the Maharaja is required for promulgating the Bill into Law.

4th March
1918

U. S. K. S. K. S. K.

First Member of Council

Submitted to His Highness.

3

I submit herewith a Final^x Note by the First
Member of Council on the subject of...promulgating
the transfer of Property Bill into law,
for His Highness' gracious approval.

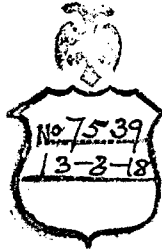
M. Y. Monaga

Dewan.

13th March 1918

RR

Record of Cases submitted for the Orders
of His Highness the Maharaja



Subject.

Promulgation of the Transfer of
Property Bill into law.

10/3

Order.

~~KRUP~~

14/3/18

Chief Justice

15-3-18

do

I have. Having you
received prof. of all-
his a reminder
15/6

G. R. S. III-2]

General and Revenue
Secretariat.

Legis

File No:

52

of 1913.

Serial
No.

Submitted with a draft order publishing
the Regulations.

Use
15.3.18.
M -

Issued
15/3

The approved copy of the Regs in question is
retained in this section & will be sent with the
translation.

DR 26/3

- 13 No of 3806 dated 15/3/18
To the Compiler, Mysore Gazette
Orders the publication of the
Regs as Regs IV of 1918.

61, 4-13
A. Rec.
9/5/13

ALL COMMUNICATIONS TO BE ADDRESSED
TO THE MANAGER.
TELEGRAPHIC ADDRESS: "MYSOREBANK."
CODE: A. B. C. 5TH EDITION.

Read in Branch 29/5
Copied.
The Bank of Mysore, Ltd.,

Bangalore, 15th May 1914

No. 9/110

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(2)

difficulties which a creditor labours under when he has a recalcitrant borrower to whom he has advanced money on the deposit of title deeds. As the law now stands in Mysore, the security, by way of deposit of title deeds of property, is unavailable to such a creditor, and even if such deposit were taken, it may legally prove worthless. When lending on such security, the Bank, in addition to other necessary documents, take a written agreement to mortgage, and in the event of the Bank being compelled to call for the due performance of that agreement, it is necessary in the first instance to bring a suit for the specific performance of such contract to mortgage, and on which stamp duty must be paid on the amount of the loan for which the properties are agreed to be mortgaged. Next, a second suit is obligatory in order to realize the security, and stamp duty again is payable on the amount claimed. How long it would take under present circumstances for a creditor to get a decree to realize on his security is a matter which can best be left to the imagination of those acquainted with the laws delays; but under the Law of Equitable mortgages, as now in force in certain parts of India, the advance is rea-

(3)

realizable at once.

Another disadvantage is that even though the title deeds have been deposited with a creditor, and an agreement to execute a mortgage when called upon has been signed, the debtor may sell away the property, and the agreement to mortgage will be of no avail against a bona-fide purchaser for consideration unless it be proved that notice of the agreement had been given to him. It is unnecessary to remark how easy it is to make fraudulent sales after depositing title deeds, and how difficult it is to disprove them.

The business of the Bank would be much facilitated and increased, as well as made secure, if title deeds could be deposited as security for its advances. The mere creation of so easy and readily realizable a security would greatly tend to reduce the present usurious terms now exacted by the Sowcar.

Further, it will also be possible for a borrower, by the deposit of the title deeds of his property, to arrange for a continuous credit being placed at his disposal which would suffice to cover a series of running transactions, and thus avoid the difficulty and incon-

(4)

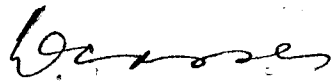
inconvenience of mortgaging his property on every occasion he required a fresh advance.

By such means will the resources of the Bank be placed within the means of investors in house and landed property, and it is unnecessary to add that from the greater facilities for credit which will thus be open, the value of immovable property will be enhanced, together with an improvement in the material welfare of the - - inhabitants of the State, and the furtherance of the trade of the country.

In conclusion, the Directors beg that this submission may be considered as one made under Cl.3, para c(i) of the Banks Memorandum of Association, and that the Government will be pleased to take early action in the direction suggested.

I have the honor to be,
Sir,
Your most obedient servant,

DRB/


Manager.

ALL COMMUNICATIONS TO BE ADDRESSED
TO THE MANAGER.
TELEGRAPHIC ADDRESS: "MYSOREBANK."
CODE: A. B. C. 5TH EDITION.

The Bank of Mysore, Ltd.,

Bangalore, 5th May 1914

No. *Q.1/103*

11/11/14

seen

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Financial Branch,
Bangalore.

Sir,

I am desired by the Directors to bring to the notice of the Government of H.H. the Maharaja the difficulty and inconvenience which the Bank is subjected to by reason of the restriction imposed by Government under Cl.5, para vii, of the Government Order No.F1.5121-73/B.9-12-2 dated 12th March 1913 viz., "not to lend money on the security of immovable property."

It is unnecessary to mention that as the prevailing condition of the Province is mainly agricultural, the investments of its inhabitants must naturally be in land or buildings, and further, it is well known that the industrial and commercial pursuits which obtain in such trade centres as Calcutta, Bombay, Madras and elsewhere are wholly absent, and the trade of the - - country is, practically, in the hands of retail merchants. This being the case, it obviously follows that the Banking securities available at such commercial centres are entirely lacking in Bangalore, and

(2)

the Directors are thus limited as regards cover for the Banks local advances to:

- (a) the deposit of gold and jewellery,
- (b) produce loans
- & (c) "foreign" securities in a very minor degree.

Nor, can it be claimed that an outlet for the Banks funds against such securities is available to any appreciable extent, and it follows that the main security for advances must be based on personal credit - not altogether a satisfactory basis. In consequence of this Government prohibition, the Bank in order to secure its personal advances, demand, if available, the deposit of the title deeds of a debtor's property with an agreement to mortgage, if necessary, and/or a written lien on his stock-in-trade and outstandings together with the execution of an On Demand Promissory note. But in adopting these measures, the legal position of the Bank is far from satisfactory. The proceedute adopted can only be looked upon more as a moral deterrent than a valid security as the non-application in Bangalore of Sec.59, para 3 of the Indian Transfer of Property Act renders such deposits worthless against a registered mortgage over the property,

(3)

and even in the event of other creditors attaching a debtor's property , it would be necessary for the Bank, in order to protect its interest, to file a regular suit and thereafter attach the property and probably share the sale proceeds proportionately with these other creditors. From this brief statement of the unsatisfactory position of the Bank, it appears incongruous to the Directors that the Bank should in the first instance be prohibited from advancing on a class of security which it must finally lay claim to by legal measures in order to recover its advances.

Further, there can be no question that the good - - services which the Bank would be able to render to - - traders and agriculturists are also entirely frustrated. The Bank are daily declining applications for advances from landholders unable or unwilling to find a guarantor or to tender some marketable security, and until the restriction now in force is removed, it is unreasonable to expect any improvement in the financial condition of the population - the main reason for which the Bank was founded.

For these cogent and urgent reasons, I am instructed

(4)

to ask for the early removal of paragraph vii in Cl.(v) of their order previously quoted and should Government be pleased to accord their approval to the same, the Directors will thereafter take the necessary steps to obtain the sanction of the shareholders and the High Court to the necessary amendment in the Banks Memorandum & Articles of Association.

In conclusion, I may add that it is not the intention of the Directors to embark upon a general policy of advances on the security of mortgaged property and it is their intention to address the Government in a further communication on the subject of the early introduction into the Province of the Indian Transfer of Property Act and the application of Sec.59, para 3 of that Act (i.e., the deposit of title deeds) to Bangalore and elsewhere by which it will then be possible for the Bank to have its advances placed on a more secure and realizable footing.

I have the honor to be,
Sir,
Your most obedient servant,

"Copy"

Agarwal
mp

(Signed)

Agarwal
Manager.

Diary No. of letter replied to _____

General and Revenue Secretariat

()

, the

191 .

To

Camp No. Mysore No. of 3

The Registrar, Chief
Court of Mysore, Bangalore

Date of issue

30/9/14

Signed by

Mr. G. Greenmire

Sir

I am directed to invite
 your attention to subjects
 Nos 8 and 52 of the Proceedings
 of the Representative Assembly
 in 1913 regarding the introduction
 of the Transfer of Property
 Act into Mysore and to
 state as follows: that
 the Bank of Mysore
 have also applied for
 over.

SUBJECT.

the extension of the
provisions of para 3
of section 59 ^{of the Act} to the
Bangalore city. ^{and not throughout Mysore} I am
to add that doubt
is entertained whether
the addition of the
proviso could validate
such mortgages or liens
unless they were valid
already by other law
or usage, and whether
such mortgages are
now valid anywhere in
Mysore. I am therefore
to request you to favour
Govt. with the opinion
of the judges of the chief
court as to the desirability
of introducing the Act
into Mysore and ^{on the point raised above and also} ~~also~~ on
the point whether any
special legal provision
may be introduced to

List of enclosures,

Copied by

Examined by

G.R.S. 27]

GENERAL AND REVENUE
SECRETARIAT.

(Continuation sheet draft form.)

recognise or validate
mortgages by mere deposit
of title deeds made in
the city of Bangalore if
not throughout the state.

I have &c.

S
24/9
For Secretary to Govt

na
17-9-4.

cc
26/9

NR 3263
213

CHIEF COURT OF MYSORE.

Bangalore, dated 26th January 1915.

128
DIARY No. J. 2443

From

N.T. GOPALIENGAR, Esquire, B.A., LL.B.,
Registrar of the Chief Court of Mysore.

10/14-1915
SECTION <i>Legis</i>
FILE NO. <i>52-13</i>
SERIAL NO. <i>5</i>

To

D.M. NARASINGA RAO, Esquire, B.A., B.L.,
Offg: Secretary to the Government of Mysore,
General and Revenue Departments.

S i r,

Adverting to your letter Camp No. J.3/Legis. 52-13-~~24~~
dated Mysore, 30th September 1914, calling for the opinion of
the Judges of this Court in regard to the introduction of the
Transfer of Property Act into Mysore, I am directed to state
that the Judges are of opinion that the provisions regarding
sales, leases, mortgages, gifts, actionable claims and ex-
changes might be introduced with advantage possibly with some
modifications and that in the earlier part of the Act sections
may be selected for incorporation in the Regulations. Sec-
tions 52 and 53 and some of the others, besides definitions,
might probably be required. The drafting of the Regulation
might be done by a small committee of lawyers and landholders
and perhaps Bankers. As regards Section 59(3) of the Act,
I am to add that it is probably useful to Banks, might be

tried

tried in Bangalore. If there is any doubt as to the validity of equitable mortgages under the Law of Mysore, it may be enacted positively that such mortgages shall be valid in Bangalore. The ~~an~~ enactment would not be retrospective.

I have the honour to be

Sir,

Your most obedient servant

U. Gopalakrishnan

R E G I S T R A R.

W. H.

N.G.

11/11 PM
29/11
191 -1
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From

The Registrar of the
Chief Court of Mysore.

To

The Secretary to the Government
of Mysore, Genl. & Rev. Depts.

Dated 26th }
Despatched 28th } January 1895

Received

General No. 3263
No. 213.
Enclosure No.

Forwards opinion
of this Court in regard
to the introduction of
the Transfer of Property
Act into Mysore

SUBJECT.....

Forwarding the Transfer of Property Bill
to the Residency for information.

Diary No. of letter replied to.....

Section *Legis*

File No. 52-13

Serial No. 6

General and Revenue Secretariat

, the

191

D.O. No. 3582/En Two.
dated 4. 12. 15

Date of issue

4. 12. 15

To

My dear sir

Signed by

Dewan

I enclose herewith

a copy of the Transfer
of Property Bill. The
Statement of Objects and
reasons that accompanies
the Bill explains the scope
and purpose of the measure.

The Bill will be placed
before the Legislative
Council in due course.

yours very sincerely

Rb over.

Dues
1/12Co
1/12/15

Dewan

To

The Honble Col.

Sir Hugh Daly, K.C.I.E., C.S.I., 4.12.15.

Resident in Mysore

All
2.12.15

Dr. B. N. Sanyal

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

File copy

THE TRANSFER OF PROPERTY ACT-1882
(IV-OF-1882).

AS MODIFIED UP TO THE 1ST DECEMBER, 1905.

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
1914

Price Fifteen Annas.

STATEMENT OF REPEALS AND AMENDMENTS.

S. 1 AMENDED	{ III OF 1885, s. 1. { VI OF 1904, s. 2.
S. 3 „	II OF 1900, s. 2.
S. 4 „	III OF 1885, s. 3.
S. 6 „	{ III OF 1885, s. 4. { II OF 1900, s. 3.
S. 59 „	VI OF 1904, ss. 3 & 4.
S. 69 „	{ III OF 1885, s. 5. { V OF 1904, s. 4.
S. 117 „	VI OF 1904, s. 6.
S. 107 NEW SECOND PARAGRAPH SUBSTITUTED	VI OF 1904, s. 5.
CH. VIII SUBSTITUTED	II OF 1900, s. 4.
REPEALED AS TO CROWN GRANTS.	XV OF 1895, s. 2.

The following changes have been made in reprinting the Act:—

- (1) amendments have been inserted in their proper places, with explanatory foot-notes :
- (2) references to repealed Acts have been altered as directed by the enactment which effects the repeal, explanatory foot-notes being inserted :
- (3) some further foot-notes have been added for convenience of reference :
- (4) the number and year of Acts referred to in the text have been noted in inner margin :
- (5) section-numbers occurring in the text have been printed in figures instead of in words :
- (6) the headings to the pages have been amplified.

Bull

THE TRANSFER OF PROPERTY ACT 1882.

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 3. Interpretation-clause.
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-

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[Price fifteen annas.]

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THE SCHEDULE.

~~ACT No. IV of 1882.~~

~~[17th February, 1882.]~~

Regulation

An Act to amend the law relating to the Transfer of Property by Act of Parties.

~~[As modified up to the 1st December, 1905.]~~

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; ~~It is hereby enacted~~ as follows:—

His Highness the Maharaja is pleased to enact

CHAPTER I.

PRELIMINARY.

Regulation
Regulation

1. This Act may be called the Transfer of Property Act, 1882.¹

Short title. cited

It shall come into force on the first day of July, 1882:

Commencement.

It extends in the first instance to the whole of British India² except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of the Punjab and the Chief Commissioner of British Burma.³

Extent.

But any of the said Local Governments may, from time to time, by notification in the local official Gazette

¹ For Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 171; for the Preliminary Report of the Select Committee, see *ibid*, 1878, Pt. V, p. 43; for the further Report of the Select Committee, see *ibid*, 1879, Pt. V, p. 106; for the third Report of the Select Committee, see *ibid*, 1881, Pt. V, p. 395; for Proceedings in Council, see *ibid*, 1877, Supplement, p. 1568; *ibid*, 1877, Supplement, p. 1690; *ibid*, 1882, Supplement, pp. 96 and 169.

As to application of certain provisions of the Act to all Cantonments in British India, see fifth note on p. 8.

² Act IV of 1882 has ceased to be in force in Naga Hills District, including the Mokokchang Subdivision, the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasia and Jaintia Hills, and the Mikir Hills Tract—see Assam Rules Manual, Ed. 1893, pp. 408, 409, Pt. II, pp. 212 and 705, respectively.

³ This reference to British Burma should now be read as referring to Lower Burma—see the Upper Burma Laws Act, 1886 (XX of 1886), s. 4, and now the Burma Laws Act, 1898 (XIII of 1898), by which Act XX of 1886 has been repealed. The Chief Commissioner of British Burma is now Lieutenant-Governor of Burma—see Proclamation, dated 9th April, 1897, in Gazette of India, 1897, Pt. I, p. 261.

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(Chapter I.—Preliminary.)

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Gazette,¹ extend this Act ²[or any part thereof] to the whole or any specified part of the territories under its administration.

³[And any Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, exempt, ⁴either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely :—

Sections 54, paragraphs 2 and 3, 59, 107 and 123.]

⁵[Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877,⁶ under the power conferred by the first section of that Act or otherwise.] III of 1877

Repeal of
Acts. *As*

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of
certain
enactments,
incidents,
rights,
liabilities,
etc.

(a) the provisions of any enactment not hereby expressly repealed :

(b) Any

Act 4 of 1882 has been extended (from 1st January, 1893) to—

- (i) the whole of the territories, other than the Scheduled Districts, under the administration of the Government of Bombay—see Bombay Government Gazette, 1892, Pt. I, p. 1071; and
- (ii) the area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon (now Chief Court of Lower Burma)—see Burma Gazette, 1892, Pt. I, p. 373.

The Act has been repealed as to Crown Grants, by the Crown Grants Act, 1895 (15 of 1895).

² The words “or any part thereof” were inserted by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s. 2.

³ This clause was substituted for the original clause by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885), s. 1, General Acts, Ed. 1898, Vol. V.

No such exemption has yet been made.

⁴ This clause was added by Act 3 of 1885, s. 2, and is to be deemed to have been added from the date on which Act 4 of 1882 came into force.

Section 54, paragraphs two and three, and ss. 59, 107 and 123, extend to every cantonment in British India—see the Cantonments Act, 1889 (13 of 1889), s. 32 (1), General Acts, Ed. 1898.

⁶ General Acts, Vol. III, p. 41.

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(Chapter I.—Preliminary.)

- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force: *Regulation*
- (c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: or *Regulation*
- (d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction: *Regulation*

and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law. *Regulation*

Regulation

3. In this Act, unless there is something repugnant in the subject or context,— *Inter-pretation clause.*

“immoveable property” does not include standing timber, growing crops or grass: ✓

“instrument” means a non-testamentary instrument: ✓

“registered” means registered in ~~British India~~ *Mysore* under the law¹ for the time being in force regulating the registration of documents: ✓

“attached to the earth” means—

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

actionable

¹ See the Indian Registration Act, 1877 (3 of 1877), General Acts, Vol. III, p. 41.

Transfer of Property.

[ACT IV]

(Chapter I.—Preliminary. Chapter II.—Of Transfers of Property by Act of Parties.)

[“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;]

and a person is said to have “notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, IX of 1872. 1872,² section 229.

Enactments relating to contracts to be taken as part of Contract Act.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.² *Regulation*

IX of 1872.

³[And sections 54, paragraphs 2 and 3, 59, 107⁴⁶ and 123⁴⁶ shall be read as supplemental to the Indian *maybe* Registration Act, 1877.] *III of 1877.*

Regulation, 1903

I of 1903

CHAPTER II.⁴

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) *Transfer of Property, whether moveable or immoveable.*

“Transfer of property” defined.

5. In the following sections “transfer of property”

¹ This paragraph was inserted by s. 2 of the Transfer of Property Act, 1900 (2 of 1900), General Acts, Vol. VII.

² General Acts, Vol. II; see also now the revised edition as modified up to 1st September, 1899, with footnotes brought down to the 30th June, 1901.

³ This portion was added by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885), s. 3, General Acts, Ed. 1898, Vol. V, p. 3.

⁴ Nothing in Chapter II is to be deemed to affect any rule of Hindu, Muhammadan or Buddhist law—see s. 2, *supra*.

1882.] *Transfer of Property.*

(Chapter II.—Of Transfers of Property by Act of Parties.)

perty” means an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself and one or more other living persons; and “to transfer property” is to perform such act.

Regulation

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force. What may be transferred.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue * * * * *¹ cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) ²[for an unlawful object or consideration within the meaning of section 23 of the Indian Con-

tract

IX of 1872.

¹ The words “for compensation for a fraud or for harm illegally caused” were repealed by s. 3 (i) of the Transfer of Property Act, 1900 (2 of 1900).

² These words were substituted for the words “for an illegal purpose,” by s. 3 (iii) of Act II of 1900.

(Chapter II.—Of Transfers of Property by Act of Parties.)

tract Act, 1872,] or (3) to a person legally disqualified to be transferee.

¹(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue or ~~the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee.~~

Persons
competent to
transfer.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Operation of
transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred

¹ Cl. (i) was added by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885), s. 4, General Acts, Ed. 1898, Vol. V, p. 3.

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(Chapter II.—Of Transfers of Property by Act of Parties.)

ferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law. Oral transfer.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein. Condition restraining alienation.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction. Restriction repugnant to interest created.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property or to compel the enjoyment thereof in a particular manner.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void. Condition making interest determinable on insolvency or attempted alienation.

Nothing

Transfer of Property. [ACT IV
(Chapter II.—Of Transfers of Property by Act of Parties.)

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Transfer for benefit of unborn person.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Rule against perpetuity.

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Transfer to class some of whom come under sections 13 and 14.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14 such interest fails as regards the whole class.

Transfer to take effect on failure of a prior transfer.

16. Where an interest fails by reason of any of the rules contained in sections 13, 14, and 15, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer in perpetuity for benefit of public.

17. The restrictions in sections 13, 14, and 15 shall not apply to property transferred for the benefit

benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed. Direction for accumulation.

Exception.—Where the property is immoveable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made has elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer. Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, When unborn person acquires vested

Transfer of Property. [ACT IV
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Interest on transfer for his benefit.

living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Contingent interest.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Transfer to members of a class who attain a particular age.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer contingent on happening of specified uncertain event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer to such of certain persons as survive at some period not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent

precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy. Conditional transfer.

Illustrations.

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with. Fulfilment of condition precedent.

Illustrations.

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the

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(Chapter II.—Of Transfers of Property by Act of Parties.)

the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Utlterior transfer conditional on happening or not happening of specified event

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustrations.

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Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Prior disposition not affected by invalidity of ulterior disposition.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, ~~the C.~~ B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen

* A to B or C

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently

Transfer conditional on performance of act, no time being specified for performance.

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(Chapter II.—Of Transfers of Property by Act of
Parties)

permanently or for an indefinite period, the performance of the act.

Transfer
conditional
on perform-
ance of act,
time being
specified.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

Election
when neces-
sary.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration;

to

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(Chapter II.—Of Transfers of Property by Act of
Parties.)

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person

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son on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled; and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

Apportionment of periodical payments on determination of interest of person entitled.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of benefit of ob-

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon

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thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose :

ligation on
severance.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

Illustrations.

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. $7\frac{1}{2}$ to C, and Rs. $7\frac{1}{2}$ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) *Transfer*

Transfer of Property. [ACT IV
(Chapter II.—Of Transfers of Property by Act of Parties.)

(B) Transfer of Immoveable Property.

Transfer by person authorized only under certain circumstances to transfer.

38. Where any person, authorised only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer, where third person is entitled to maintenance.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

A stet

Illustration.

A, a Hindu, transfers Sultanpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of

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of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

Burden of obligation imposing restriction on use of land,

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

or of obligation annexed to ownership but not amounting to interest or easement.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by ostensible owner.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer,

Transfer by person having authority to revoke

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(Chapter II.—Of Transfers of Property by Act of Parties.)

former transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

Transfer by unauthorized person who subsequently acquires interest in property transferred. **43.** Where a person erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Transfer by one co-owner. **44.** Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject

subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

Joint transfer for consideration.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Transfer for consideration by persons having distinct interests.

Illustrations.

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza

Substitute local terms unless these are from actual decided cases.

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mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B. and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in Mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

Transfer by co-owners of share in common property.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

Priority of rights created by transfer.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Transferee's right under policy.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage, by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much

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much thereof as may be necessary, to be applied in reinstating the property.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Rent bond
fide paid to
holder under
defective
title.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

Improve-
ments made
by bond fide
holders
under
defective
titles.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immoveable property

Transfer of
property
pending suit
relating
thereto.

Transfer of Property.

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is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Fraudulent transfer.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

"Sale" defined.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.

¹ Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In

¹ As to limitation to the territorial operation of paragraphs 2 and 3 of s. 54, see s. 1, *supra*. These paragraphs extend to every cantonment in British India—see the Cantonments Act, 1889 (13 of 1889), s. 32 (1); General Acts, Vol. V, Ed. 1898, p. 335.

S 54 Policy to be considered

Household sale

¹In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. Contract for sale.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold: Rights and liabilities of buyer and seller.

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between

¹ As to limitation to the territorial operation of paragraphs 2 and 3 of s. 54, see s. 1, *supra*. These paragraphs extend to every cantonment in British India—see the Cantonments Act, 1889 (13 of 1889), s. 32 (1), General Acts, Vol. V, Ed. 1898, p. 335.

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- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same :

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it:

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power

Provided that, (a) where the seller retains any part of the property comprised in such documents;

he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

- (a) to the rents and profits of the property till the ownership thereof pass to the buyer;
- (b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

- (a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;
- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-

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chase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

- (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
 - (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.
- (6) The buyer is entitled—
- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
 - (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

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An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

several
56. Where ~~two~~ properties are subject to a common charge and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend. *ies/*

Sale of one of two properties subject to a common charge. *ies/*

Discharge of Incumbrances on Sale.

57. (a) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

Provision by Court for incumbrance and sale free therefrom.

- (1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of ~~India~~, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and
- (2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

authorised by

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

(b) Thereupon the Court may, if it thinks fit, and after notice, to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) ~~a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction~~, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

"Mortgage,"
"mortgagor,"
"mortgagee,"
"mortgage-
money" and
"mortgage-
deed" defined.

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

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The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) Where

In the original form, it assumes the validity of such mortgages independently & probably introduces all the rules of Courts about equitable mortgages. ^{Transfer of Property.} [ACT IV] (Chapter IV.—Of Mortgages of Immoveable Property and Charges.) But would either Courts (without more) be sufficient for us?

English mortgage.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Mortgage when to be by assurance.

^{159.} Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by ²[a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, ³[Rangoon, Moultmein, Bassein and Akyab], by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

Right of mortgagor to redeem.

^{60.} At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor; and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him

or

¹ As to limitation to the territorial operation of s. 59, see s. 1, *supra*. S. 59 extends to every cantonment in British India—see the Cantonments Act, 1889 (XIII of 1889), s. 32 (1), printed, General Acts, Vol. V, Ed. 1898, p. 335.

² Substituted for "an instrument" by the Transfer of Property Act (Amendment) Act, 1904 (6 of 1904), s. 3.

³ Substituted for "and Rangoon" by Act 6 of 1904, s. 4.

In such areas as Government may by notification declare, a mortgage may be created by delivery to a creditor or his agent, of documents of title to imm. prop^y, with intent to create a security thereon.

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or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished :

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

Redemption of portion of mortgaged property.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Right to redeem one of two properties separately mortgaged.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

62. In

Right of usufructuary mortgagor to recover possession.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property,—

- (a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;
- (b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

Accession to mortgaged property.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where

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Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease. Renewal of mortgaged lease.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee— Implied contracts by mortgagor.

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;
- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend the mortgagor's title thereto;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform

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the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

Waste by
mortgagor in
possession.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

Right to
foreclosure
or sale.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money

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(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or
- (c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or
- (d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only :—

Right to sue for mortgage-money.

- (a) where the mortgagor binds himself to repay the same :

(b) Where

These provisions must be strictly used as to their local applicability.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

- (b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor :
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases ¹[and in no others], namely :—

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist ¹[or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette];

(b) where the mortgagee is the Secretary of State for India in Council;

(c) Where

¹ These words were inserted by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885), s. 5, General Acts, Vol. V, Ed. 1898, p. 3.

Is this
defn of
English mortg.
suff. necessary?

2 [Power of sale
when valid.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

- (c) where the mortgaged property or any part thereof is situate within the towns of ~~Calcutta, Madras, Bombay, Karachi~~
~~[Rangoon, Moulinein, Bassein or~~
~~Akyab].~~

But no such power shall be exercised unless and until—

- (1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or
- (2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-

¹ Substituted for the words "for Rangoon," by s. 4 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

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mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force. *Regulation*

The powers and provisions contained in sections 6 to 19 (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866,¹ shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist,² [or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette]. XXVIII of 1866.

Accession to mortgaged property.

69-70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

Renewal of mortgaged lease.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. When

¹ General Acts, Vol. I, p. 611.

² These words were inserted by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885), s. 5, General Acts, Vol. V, Ed. 1898, p. 3.

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(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

71 ~~72~~. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

Rights of mortgagee in possession.

- (a) for the due management of the property and the collection of the rents and profits thereof;
- (b) for its preservation from destruction, forfeiture or sale;
- (c) for supporting the mortgagor's title to the property;
- (d) for making his own title thereto good against the mortgagor; and
- (e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Is this done in mortgage.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the

property

Transfer, of Property. [ACT IV
(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

Charge on proceeds of revenue-sale.

72 73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Right of subsequent mortgagee to pay off prior mortgagee.

73-74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law¹ for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Rights of mesne mortgagee against prior and subsequent mortgagees.

74 75. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Liabilities of mortgagee in possession.

75-76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,

(a) he must manage the property as a person of ordinary prudence would manage it, if it were his own;

(b) he

¹See the Indian Registration Act. 1877 (3 of 1877), General Acts, Vol. III, Ed. 1898, p. 41.

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- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied

Where the mortgage income is not stipulated to be for interest on the debt.

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occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

Loss occasioned by h's default.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

Receipts in lieu of interest.

76 ~~77~~. Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

Postponement of prior mortgagee.

77 ~~78~~. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has

§ 76 & 77 not apply to cases where h's receipt is given in lieu of interest. § 77 also seems inapplicable.

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has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

78 79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum though made or allowed with notice of the subsequent mortgage.

Mortgage to secure uncertain amount when maximum is expressed.

Illustration.

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

79 80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Tacking abolished.

Marshalling and Contribution.

80 81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to

Marshalling securities.

have

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have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

Contribution]
to mortgage-
debt.

§ 82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee.

Deposit in Court.

Power to
deposit in
Court money
due on
mortgage.

§ 83. At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to
money

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee

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mortgagee may, on presenting a petition (verified in manner prescribed by law¹ for the verification of complaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid. deposited by mortgagor.

§ 84. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83² the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be. Cessation of interest.

Nothing in this section or in section 82² shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure, Sale or Redemption.

XIV of 1882. ~~85. Subject to the provisions of the Code of Civil Procedure, section 437,² all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this Chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.~~ Parties to suits for foreclosure, sale and redemption.

Foreclosure and Sale.

~~86. In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree ordering that an account~~ Decree in foreclosure suit.

¹ See the Code of Civil Procedure (Act 14 of 1882), ss. 51 and 52; General Acts, Ed. 1898, Vol. IV, see also in the revised edition as modified up to 1st December, 1899.

² See s. 437 of Act 14 of 1882.

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~~account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,~~

~~and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but~~

~~that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.~~

Procedure in
case of pay-
ment of
amount due.

~~87. If payment is made of such amount and of such subsequent costs as are mentioned in section 94, the defendant shall (if necessary) be put into possession of the mortgaged property.~~

Order
absolute for
foreclosure.

~~If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff :~~

Power to
enlarge time.

~~Provided that the Court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.~~

On

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~~On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.~~

XIV of 1882.

~~In the Code of Civil Procedure, Schedule IV, No. 129, for the words "Final decree" the words "Decree absolute" shall be substituted.~~

~~88. In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section 86, and also ordering that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.~~

Decree for sale.

~~In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.~~

Power to decree sale in foreclosure suit.

~~89. If in any case under section 88 the defendant pays to the plaintiff or into Court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section 94, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale~~

Procedure when defendant pays amount due.

Order absolute for sale.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

~~of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section 88; and thereupon the defendant's right to redeem and the security shall both be extinguished.~~

Recovery of
balance due
on mortgage.

~~90. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.~~

Redemption.

Who may sue
for redemption.

84 ~~91.~~ Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

- (a) any person (other than the mortgagee of the interest sought to be redeemed), having any interest in or charge upon the property;
- (b) any person having any interest in or charge upon the right to redeem the property
- (c) any surety for the payment of the mortgage-debt or any part thereof
- (d) the guardian of the property of a minor mortgagor on behalf of such minor;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;
- (f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;
- (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

92. In

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Transfer of Property.

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92. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering—

Decree in redemption suit.

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree;

that, upon the plaintiff paying to the defendant or into Court the amount so due on a day within six months from the date of declaring in Court the amount so due to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall re-transfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; and

that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

93. If payment is made of such amount and of such subsequent costs as are mentioned in section 94, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

In case of redemption, possession.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

In default, foreclosure or sale.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons

claiming

are there moving in the case?

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~~claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.~~

~~If he applies for the latter order, the Court shall pass an order that such property, or a sufficient part thereof be sold, and that the proceeds of the sale (after deraying thereout the expenses of the sale) be paid into Court and applied in payment of what is round due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.~~

~~On the passing of any order under this section the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished :~~

Power to
enlarge time.

~~Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section 92 for payment to the defendant.~~

Costs of
mortgagee
subsequent to
decree.

~~94. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this Chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.~~

Charge of
one of several
co-mortga-
gors who
redeems.

~~95. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.~~

Sale of property subject to prior Mortgage.

Sale of
property

~~96. If any property the sale of which is direct under this Chapter is subject to a prior mortgage,~~
the

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~~the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.~~ subject to mortgage.

~~97. Such proceeds shall be brought into Court and applied as follows :—~~ Application of proceeds.

~~first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;~~

~~secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;~~

~~thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;~~

~~fourthly, in payment of the principal money due on account of that mortgage; and~~

~~lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.~~

~~Nothing in this section or in section 56 shall be deemed to affect the powers conferred by section 57.~~

Anomalous Mortgages.

86 98. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced

Mortgage not described in section 58, clauses (b), (c), (d) and (e).

61

*Is this necessary?
Does it not
go without
saying?*

*Is mortg.
by con-
ditional
sale required
here? If no
suit for foreclosure
is made, does
sale operate without*

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evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

Attachment of Mortgaged Property.

Attachment
of mortgaged
property.

Why null &

99. ~~Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 67, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section 43.¹~~ XIV of 1882.

Charges.

Charges.

87 **100.** Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 *80* and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

Extinguish-
ment of
charges.

88 **101.** Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Notice

¹ See now s. 43 of Act 14 of 1882, General Acts, Ed. 1898, Vol. IV

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Notice and Tender.

87 **102.** Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient. Service or tender on or to agent.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

90 **103.** Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purposes of serving Notice, etc., to or by person incompetent to contract.

serving

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serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract¹; and the provisions of Chapter XXXII of the Code of Civil Procedure² shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder. under XXXII
XIV of 1882.

Power to
make rules.

// 104. The ³ High Court may, from time to time, make rules consistent with this Act for carrying out in itself and in the Courts of Civil Judicature subject to its superintendence the provisions contained in this Chapter. Chief
Regulation

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

Lease
defined.

92 105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms.

Lessor, lessee,
premium and
rent defined.

The transferor is called the lessor; the transferee is called the lessee, the price is called the premium, and

¹ As to persons competent to contract, see ss. 11 and 12 of the Indian Contract Act, 1872 (9 of 1872); General Acts, Vol. II, Ed. 1898. See also now the revised edition of this Act, as modified up to 1st September, 1899, with footnotes brought down up to the 30th June, 1901.

² See now Chapter XXXI of Act 14 of 1882, General Acts, Ed. 1898, Vol. IV, and the revised edition as modified up to 1st December, 1899.

For rules made by—

(1) the High Court at Bombay, see Bombay Government Gazette, 1904, Pt. I, p. 1001;

(2) the Chief Court of Burma, see Burma Gazette, 1904, Pt. IV, p. 437.

(Chapter V.—Of Leases of Immoveable Property.)

and the money, share, service or other thing to be so rendered is called the rent.

93 ~~106~~. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Duration of certain leases in absence of written contract or local usage.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

94 ~~107~~. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

Leases how made.

²[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession :

Provided that the ~~Local~~ Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the ~~local~~ official Gazette, direct that leases of immoveable property, other than leases from year to year, or for

¹ As to limitation to the territorial operation of s. 107, see s. 1, *supra*. S. 107 extends to every cantonment in British India—see the Cantonments Act, 1889 (13 of 1889), s. 32 (1), General Acts, Vol. V, Ed. 1898, p. 335.

² This paragraph and proviso were substituted for the original by s. 5 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

The original paragraph was as follows :—

“All other leases of immoveable property may be made either by an instrument or by oral agreement.”

Transfer of Property. [ACT. IV
(Chapter V.—Of Leases of Immoveable Property.)

for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]

Rights and
liabilities of
lessor and
lessee.

95 108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

(A) Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(b) the lessor is bound on the lessee's request to put him in possession of the property .

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property, during the time limited by the lease without interruption

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B) Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if

(e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(g) if the lessor neglects to make any payment which he is bound to make, and which if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth : provided he leaves the property in the state in which he received it :

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or party may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

(Chapter V.—Of Leases of Immoveable Property.)

first nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a ~~Court of Wards~~, to assign his interest as such tenant, farmer or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, or which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor :

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell
timber,

timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto :

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes :

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

96 109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Rights of
lessor's
transferee.

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

97 110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commence-

Exclusion of
day on which
term
commences.

ment

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ment is named, the time so limited begins from the making of the lease.

Duration of
lease for a
year.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to de-
termine lease.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Determina-
tion of lease.

98 111. A lease of immoveable property deter-
mines—

- (a) by efflux of the time limited thereby :
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event :
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event :
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right :
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :
- (f) by implied surrender :
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself;

himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease :

- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

⁹⁷ 112. A forfeiture under section ~~111~~⁹⁸, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting. Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

¹⁰⁰ 113. A notice given under section ~~111~~⁹⁹, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting. Waiver of notice to quit.

Illustrations.

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where

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Relief against forfeiture for non-payment of rent. /9/ **114.** Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Effect of surrender and forfeiture on under-leases. /02/ **115.** The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114. /0/

Effect of holding over. /03/ **116.** If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106. 93

Illustrations.

(a). A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire

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(Chapter V.—Of Leases of Immoveable Property.

Chapter VI.—Of Exchanges.)

expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

104 **117.** None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the ~~Local Government, with the previous sanction of the Governor General in Council,~~ may by notification published in the local official Gazette declare all or any of such provisions to be so applicable [in the case of all or any of such leases], together with, or subject to, those of the local law, if any, for the time being in force.

Exemption of leases for agricultural purposes.

Should be compared with provisions of the Rev Code & differences noted.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

105 **118.** When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

Exchange defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

106 **119.** In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

Right of party deprived of thing received in exchange.

120. Save

These words were inserted by s. 6 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

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(Chapter VI.—Of Exchanges. Chapter VII.—Of Gifts.)

Rights and liabilities of parties. 107 **120.** Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money. 108 **121.** On an exchange of money, each party warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

"Gift" defined. 109 **122.** "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

Transfer how effected. 110 **123.** For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Gift of existing and future property. Such delivery may be made in the same way as goods sold may be delivered.

124. A gift comprising both existing and future property is void as to the latter.

125. A

¹ As to limitation to the territorial operation of s. 123, see s. 1, *supra*. S. 123 extends to every cantonment in British India—see the Cantonments Act, 1889 (13 of 1889), s. 32 (1), General Acts, Vol. V, Ed. 1898.

Poss. not necessary if instt is registered. Is this change desirable?

1882.]

Transfer of Property.
(Chapter VII.—Of Gifts.)

112 **125.** A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted. Gift to several, of whom one does not accept.

113 **126.** The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

114 **127.** Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully. Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his Onerous gift to disqualified person.

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(Chapter VII.—Of Gifts. Chapter VIII.—Of Transfers of Actionable Claims.)

his acceptance.¹ But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuse to accept the lease. He does not by this refusal forfeit the money.

Universal donee.

115 128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Saving of donations mortis causa and Muham-madan law.

116 129. Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muham-madan law, or, save as provided by section 123,¹ any rule of Hindu or Buddhist law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

Transfer of actionable claim.

116 130. (1) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whener by way of damages or otherwise, shall vest in

¹ This Chapter was substituted for the original Chapter VIII by the Transfer of Property Act, 1900 (2 of 1900), General Acts, Vol. VII.

(Chapter VIII.—Of Transfers of Actionable Claims.)

in the transferee, whether such notice of the transfer as is hereinafter provided be given or not

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Why

Illustrations.

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132: 119

§ 131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Notice to be in writing, signed.

(Chapter VIII.—Of Transfers of Actionable Claims.)

Liability of transferee of actionable claim

119 **132.** The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer

Illustrations.

(i) A transfers to C a debt due to him by D, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B, under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

Warranty of solvency of debtor.

120 **133.** Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Mortgaged debt.

121 **134.** Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer, and the residue, if any, belongs to the transferor or other person entitled to receive the same.

Assignment of rights under marine or fire policy of insurance.

122 **135.** Every assignee, by endorsement or other writing, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

136. No

1882.]

Transfer of Property.

(Chapter VIII.—Of Transfers of Actionable Claims. The Schedule.)

12 ~~2~~ 136. No Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

Incapacity of officers connected with Courts of Justice.

12 ~~4~~ 137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Saving of negotiable instruments, etc.

Explanation.—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

THE SCHEDULE. *slit*

Year and chapter.	Subject.	Extent of repeal.
(a) STATUTES.		
27 Hen. VIII, c. 10	Uses	The whole.
13 Eliz., c. 5	Fraudulent conveyances	The whole.
27 Eliz., c. 4	Fraudulent conveyances	The whole.
4 Wm. and Mary, c. 16.	Clandestine mortgages	The whole.

(b) ACTS

Transfer of Property. [ACT IV, 1882.]

(The Schedule.)

THE SCHEDULE—*contd.*

Number and year.	Subject.	Extent of repeal.
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(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

IX of 1842	Lease and release	The whole.
XXXI of 1854	Modes of conveying land	Section 17.
XI of 1855	Mesne profits and improvements.	Section 1; in the title, the words "to mesne profits and", and in the preamble "to limit the liability for mesne profits and".
XXVII of 1866	Indian Trustee Act	Section 31.
IV of 1872	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876	Oudh Laws Act	So far as it relates to Bengal Regulations XVII of 1806.
I of 1877	Specific Relief	In sections 35 and 36, the words "in writing".

(c) REGULATIONS.

Bengal Regulation I of 1798.	Conditional sales	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts; Interests; Mortgagees in possession.	Section 15.

I presume these have been introduced by me as per order.

27/11

Draft State Objects Resolutions

The question of introducing
the Transfer of Property Act (IV of 1882)
has been under the consideration of
Government for a number of
years. When in 1906 the
Judges of the Chief Court were
consulted, ~~last~~ - Mr L. Moore,
and Mr P. S. Krishna Rao expressed
themselves in favour of the
introduction of the Act. The
Judges of the Chief Court were
again consulted last year, and
is recommend the introduction of
the Act ~~with such modifications~~
~~as may be found considered~~
~~necessary to suit the~~

In the annual
meetings of the Representative
Assembly also the members
have been urging the
introduction of the Act into
the State

The rules contained in the
Act do not appear to be
opposed to any ~~principle of~~
law or practice for the
the State. The introduction
of the Act will make certain
transfers compulsorily registrable,
and it is hoped that ^{the} chances
of litigation and the opportunity
for perjury in connection with
sales of immovable property
will be reduced to a great
extent by ^{the} means of
compulsory registration.
In this connection it is
many times pointed out that
are already recognized for
the measure contemplated is a
powerful reason for the
introduction of the Act; and
~~it is the case that the measure will~~
~~be a source of~~ uncertainty
and confusion in the existing
practice may be avoided by the proposed

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D.O. No 9169.

16.12.15

THE MYSORE RESIDENCY,
Bangalore, 15th December 1915

B 711
104

My dear Dewan Sahib

16/12/15

Please put
up file

16/12

Legis
17/12

I am desired to acknowledge the receipt of your d.o. letter No. 3582, dated the 4th December 1915, forwarding a copy of the Transfer of Property Bill, and, in reply, to say that the Resident sees no prima facie objection to the Bill being laid before the Legislative Council.

2. I am, at the same time, to invite the attention of the Durbar to the following point:-

In section 100 of the British Transfer of Property Act, IV of 1882, the words "and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property" have been repealed by the Code of Civil Procedure, V of 1908.

The Durbar, however, may have retained these words in their draft bill for some special reason.

Yours sincerely
M. Visvesvaraya

Sir M. Visvesvaraya, K.C.I.E.,
Dewan of Mysore.

GEN. & TARIAT.
G. R. S. 26] 12 JAN 1917
TYPE 1

Legis File No. 52
Serial No. 8/13

Diary No. of letter replied to

General and Revenue Secretariat

()
the 191 . }

To

No. 2573
Encl
The Registrar
Chief Court of Mys.
Bangalore

Date of issue..... 16/1/17

Signed by... W. G. Srinivasa Sir

By

I am directed to forward
herewith a copy of the
Transfer of Property Bill
as well as of the Report
of the Select Committee
thereon together with a
list of ~~corrected~~ amendments
made by them in the Bill
and to request you to be

over.

SUBJECT.

so good as to favour Govt
with the opinion of the judges
of the Chief Court on these ~~points~~ ^{recommended} amendments ~~proposed~~ by the Select Com. committee.

The matter may kindly
be treated as urgent.

I have &c.

S
1911

For Secretary to Govt.

well
12/1

List of enclosure

Copied by

Examined by

D. Dis "o. 773. Enl

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17
Legis
52-13
Chief Court of Mysore,

Bangalore, 27th February 1917

28th

From

I. T. GOPALIENGAR, Esq., B. A., LL. B.,

Registrar of the Chief Court of Mysore,

To

D. M. NARASINGA RAO, Esq., B. A., B. L.,

Secretary to the Government of Mysore,

General Department.

Sir,

Adverting to your letter No. J. 2153/Legis:52-13-8 dated the 16th January 1917 forwarding a copy of the Transfer of Property Bill as well as of the Report of the Select Committee thereon together with a list of amendments made by them in the Bill and inviting the opinion of the Judges on the amendments recommended by the Select Committee, I am directed to forward the accompanying note containing the opinion of the Judges on the subject.

I have the honor to be,

S i r,

Your most obedient servant,

N. T. Gopalengar

R E G I S T R A R.

M. S. C.

NOTE ON THE AMENDMENTS RECOMMENDED BY THE SELECT
COMMITTEE ON THE TRANSFER OF PROPERTY BILL.

THE CHIEF JUDGE.

The omission of the 1st part of Section 2.

I have nothing to say against this: oral transfers of immoveable property are few and decreasing I think; and though the effect of the omission may be that a party to a contract not in writing may not have a suit for rescission under section 35 of the Specific Relief Act, his rights under the Contract Act will not be affected. I do not imagine that in many cases any one will be seriously affected.

Clause 5.

The word 'other' which is in italics is found in my edition of Shepherd and Brown. It is evidently wanted.

Clauses 2(13) - 14.

I agree that the restriction of gifts to persons alive at their date should be removed and for this purpose the amendment of Clause 2 (d) is necessary. Possibly more than that is necessary and even more than the suggested amendment of the Indian Succession Act. But for the purposes of this Act the proposed alteration in Clause (2) may be better than nothing.

As to Clause 13 which as amended apparently gives to transfers by Hindus a wider range than those by other communities, I do not know of much to be said for the amendment; I am not in favour of giving people wide powers of control over the destination of their property after they have parted with it: but if the Hindu community want the provision

provision no one else has any right to object.

Clause 14.

I think the addition is desirable if it necessarily implies that Hindus can make transfers creating future interests: that might perhaps be inferred from the inclusion of section 14 in the saving amendment in 2(d) but probably that would not be sufficient by itself seeing that both that clause and section 14 are couched in negative terms.

Even as it stands it may perhaps be argued that the section cannot create a right to make transfers which is not given by the Hindu Law apart from it, in as much as it merely places a limitation on the effect of transfers otherwise legal. If the Hindu Law as expounded in Mysore does not make a transfer legal which creates an interest in an unborn person this section even as amended does not legalize it. Section 7 confines the transferor to the law by which he is governed and it may be doubted if by negative enactments we can affect a positive rule of law.

This is why I say that we may want something more than these restrictive amendments if the Hindu Law as at present understood is to be altered: something on the lines of the recent enactments in British India referred to by the Select Committee. If such a regulation be passed laying down the Hindu Law these amendments though harmless would be unnecessary as the Hindu Law so laid down would be saved by section 2 (d) and section 7 would empower the transferor to make all transfers not restricted by the following sections. Nevertheless I would retain the amendments at any rate until the law is changed by some positive regulation.

In paragraph 6 of the Select Committee's report the Committee state that they have amended Clause 39
bu

but the clause as amended is not found in the subsequent list shewing amendments.

It is an accidental omission which is very much regretted.

I am not quite clear why a transferee who has notice of the right should be protected, provided that the intention was to defeat the right. Of course the intention itself could hardly be proved if the effect of the transfer is not to defeat the right: should not the transferee who knows of the right be required to satisfy himself that it is not defeated by the transfer to himself? e.g. that there is enough property left, or that what he pays is sufficient to satisfy the claim? I doubt if there would be any injustice in that, but it may be considered to throw too heavy a burden on owners of immoveable property if they have to satisfy their transferees that they are not unduly depleting their resources. The matter is not quite clear to me, but if the amendment is enacted persons having a claim to maintenance will do well to get it charged on the property. I should not oppose the amendment. It is in accordance with the cases which lay down that mere notice of the claim is not sufficient to lay on the transferee the burden of satisfying it.

Clause 59.

The Select Committee propose to require all mortgages to be registered. To that I see no objection.

I am not sure that mortgages by deposit of title deeds are desirable even in the case of Banks, but I am not familiar with the subject. Who is to send the note to the Registration office? The Bank will lose its mortgage I suppose if it does not see to that. Suppose it is sent to two of three registering offices and not to the third. Is the

the whole mortgage lost or all preserved by the fact that it is registered in some office? or is the security of that part of the property lost which is not registered in book I in the office where it is situate? The Banks may perhaps find it troublesome to ascertain all the registration offices and the mortgagor might deceive them by concealing one. Under section 89 of the Registration Regulation no fatal consequences ensue to the lender or borrower: the consequences of a mistake seem to fall only on the subsequent transferee but under the terms of the proposed amendment the validity of the mortgage seems to depend on the delivery or transmission of the note to the right place. I don't know how Bankers will like this, and I am not sure that it is necessary: if a lender or purchaser takes a mortgage or buys without looking for title deeds that seems to be gross negligence. If he is put off with stories of fire, theft or white ants it is his own fault. It is no doubt true that the preservation of title deeds is a good deal neglected, but I am not sure that it would not be better to give Banks some special facilities for registration in the ordinary way such as requiring a registering officer to attend the Bank's office on a fixed day or days in each week. If something of that sort were done clause 59 (2) would be unnecessary. I don't know how many transactions of the kind there are now or are likely to be or whether there will be any proclaimed areas in which there is a bank and no Sub Registrar, but I confess to misgivings about registration by post if the validity of the mortgage may depend on proof that a letter was posted.

The clause would be to my mind safer and probably equally effective for the protection of subsequent encumbrancers if instead of making the registration by post a condition of validity it were made a condition of priority.

5.

The Bank would have to register in the ordinary way or in the prescribed way in order to defeat a subsequent encumbrancer.

But on the whole I would suggest further consideration whether there is sufficient demand for this kind of security. There is great simplicity in requiring all mortgages to be regularly registered and if there is to be a registered memorandum of property accompanying the title deeds sufficient to shew subsequent purchasers what encumbrance is on the property we may almost as well have a registered deed.

In British India these so called 'equitable mortgages' are confined to certain ports where I presume there is a demand for them, but if they are not wanted in Delhi, Cawnpore, Jubbalpur, Madura, Trichinopoly or Tuticorin they may not be necessary for Mysore or Bangalore.

As regards attestation I agree with the Select Committee that the rule probably does more harm than good under our rather loose system of conveyancing - and in our conditions where we have so many small mortgages by peasant proprietors, and no solicitors to see that deeds are correctly drawn and executed.

Clause 61.

I think the course chosen by the Select Committee is probably the better - though there is something to be said in favour of consolidating mortgages on the same property.

Clause 62.

Deposit in court and tender can hardly be said to be the same thing, though they may have the same consequences, and there seems to be no harm in calling attention to the alternative by express words in this section. If necessary they can be inserted also in Clause 60 which would then

run:--

"At any time after the principal money has become payable the mortgagor has a right on payment or tender of the mortgage money at a proper time and place, or on deposit in court as hereinafter provided to etc."

The words 'as hereinafter provided' would prevent an effectual deposit after suit for redemption is barred by limitation. The deposit and tender are made alternatives in Clauses (75) 76.

Clause 67.

I think the amendment meets the case and may be adopted.

Clause (75) 76.

The substitution in this clause 58 (d) of 'principal money' for 'mortgage money' is good. The terminology of the British Indian Act is lacking in precision in several respects.

Clause (80) 81.

If this is to be made more precise than in the bill as drafted I think the amendment will have to be somewhat modified.

I may suggest

"If the owner of two or more properties mortgages more than one of them to one person and then mortgages to another person one or more but not all of the properties already mortgaged the second mortgage is.....an interest in any of the properties mortgaged."

The idea of the Act as it stands is not I imagine to confine the section to a person who owns two properties
only

only, and might be more accurately rendered by saying

"Where two properties belonging to the same owner are mortgaged to one person and one of them is then mortgaged to another person" (as in section 82) but the draft as amended is probably better.

The last word "mortgaged" in my draft is perhaps unnecessary because nothing done by the mortgagees can prejudice the rights of third parties in property not mortgaged, but it may make the thing clear.

I quite concur in the proposal to omit the provision as to want of notice: it has always been a stumbling block.

I also agree with the proposed sub clause (2). 'Some' I suppose includes 'one'. The rights of purchasers can generally be worked out under section 82 but there may be cases in which it would be more advantageous to them to be able to marshal.

Clause (84) 91.

(a) the addition of the words 'or any part thereof' is advisable.

(h) seems to be covered by (a)

'May become entitled' cannot mean may become entitled after redemption, and (a) seems to include all interests in the property which can give a right to redeem: (b) makes an interest in the equity of redemption equivalent to an interest in the property: (c) to (g) apply to persons who have no interest in the property but who may be interested in clearing it of the mortgage. But? if a guardian of the property of a minor or lunatic person having an interest under (a) may not redeem on his behalf: say an infant widow with a charge for maintenance? If it were not for (d) and

(e)

(e) it would be clear that such a guardian has a right to redeem for his ward: I do not quite know whether (d) and (e) are necessary.

I find nothing in the report of the Select Committee to explain why they insert (h) but there is probably some reason for it which I have overlooked.

Clause (85) 95.

There seems to be a mistake in the print. The redeeming mortgagor gets his charge against each co-mortgagor to the extent to which that co-mortgagor has benefited i.e. to the extent of the proportion of the expenditure which that co-mortgagor would have had to incur. In the section as it stands in the Act, the pronoun 'his' must be referred to "each of the co-mortgagors" and "his proportion" is equivalent to "the proportion which each co-mortgagor is liable (under the general law) to contribute."

As printed 'his' in square brackets is to be omitted and when that is done the section is not English: for 'his' we must substitute '[?]each' or perhaps 'that'.

*Subsidiary.
The word "such"
has been accidentally
omitted before the
word "co-mortgagor"*

We should also say rights in the share rather than on the share: 'on' has apparently been inadvertently left in the draft because the original ran "a charge on".

Clause (90) 103.

In avoiding one pit fall the Select Committee have perhaps fallen into another. The original does not provide for service on the curator though it means to do so: but the amendment reads ungrammatically "may be served on or by.....by the curator": he can't serve a summons on*himself. It should read I think "such notice may be served on or by, and such tender or deposit may be made

accepted

accepted or taken by": this at any rate makes it clearer.

Clause (92) 105.

We want the article 'a' before 'share of crops' as well as before 'price': it is so in the British India Act.

Clause (94) 107.

*Order. This looks like
a little
improvement.*

We want here the article 'a' before 'lease of immoveable property from year to year' though the capital 'A' goes out.

I have confined my attention to the amendments made by the Select Committee in accordance with the Government ^{Order} under reply.

Mr. Justice K. S. CHANDRASIEKHARA AIYAR.

I had kept this file by in order to scrutinise the provisions of the Bill once again in the light of the valuable note of the Chief Judge. But as the opinion called for by Government is with reference to the amendments recommended by the Select Committee and as I had myself taken part in my capacity as a member and as Chairman of the Select Committee in putting forth those amendments, I have thought it better not to offer any remarks. It is for the Government or the Legislative Council to take into consideration any criticisms or suggestions that may be offered on the Bill as amended by the Committee; and those made by the Chief Judge are, if I may say so without impertinence, entitled to the best attention, particularly those relating to clauses 13 and 14 (transfers by Hindus), clause 59 (mortgage

by

by deposit of title deeds) and clause 81 (marshalling of securities). I may also note that there ^{are} a number of printing errors in the Bill as published which could have been avoided with a little more care in the preparation and correction of the proof.

Mr. Justice T. PARAMASIVA IYER.

I would only suggest illustrations under section 93 to bring out clearly the requirements of a valid notice to quit (1) agricultural land and (2) houses.

N. Ropaluniga

R E G I S T R A R.

Sh

TELEGRAPHIC ADDRESS:-
"MYSOREBANK."
CODE - 5TH EDITION A.B.C.

All communications to be addressed
TO THE MANAGER.

No D/O

The Bank of Mysore Ltd.

116/49
59/4
SECRETARIAT
III
JUDICIAL
19 DEC 1917

Bangalore, 17th December 1917

G. Sreenivasa Iyer, Esq.

Secretary, Legislative Dept.

Dear Mr. Sreenivasa Iyer,

With reference to your personal interview of date, made under instructions of the Chief Secretary to the Government, when you were good enough to point out the risks the Bank run if the new Sub-clause No. 59(2) be added to the Transfer of Property Act, I am desired by the Directors to state that the Bank are quite prepared to incur the risk of there being any default on its part, or delay on the part of the Post Office, by reason of the absence or delay of notice to every registering officer of the delivery to the Bank by a debtor of the documents of title relating to immovable property as laid down in the proposed clause. As suggested by you it would no doubt eliminate these risks if Government were good enough to depute a special registering officer to attend daily at the Banks offices at certain fixed hours for the purposes of effecting the registration of the memorandum of deposit mentioned in the clause in question, and for such services the Bank are prepared to bear a share of the salary of the registering officer.

As regards the

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criticism to the effect of the absence of demand for the introduction of the law of equitable deposit, on the part of the mercantile community in towns other than those at which a deposit of title deeds of property to secure a debt is a valid security, I would point out that such a demand was unanimously made to the Government of India at the Conference of All India Chambers held in Calcutta in 1906 as evidenced in the accompanying Report of the proceedings of the Conference. I would, however, point out that it has been legally held that Sec.59 of the Transfer of Property Act did not prohibit the making of equitable mortgage by a deposit of title deeds relating to property outside Presidency towns. It is laid down by Justice Bakewell, in the suit of the South Indian Export Co. Vs. Krishnappa Naidu and other(Dec.1914), that if the deposit was within the limits of such town, the policy of this proviso to Sec.59 was to facilitate commercial transactions, to enable persons owning properties outside the Presidency towns to deal with it with the same facilities as with the property situate in the Presidency town itself.

Under this ruling the mofussil merchants are put on the same footing as the town merchant, and I venture to submit the same facilities should be afforded to the mercantile community of this State.

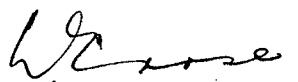
The official argument of the loss of revenue to Government by the deposit of title deeds of property is not altogether correct and is further taking a very narrow view of the case. A simple

example will prove the falaciousness of the argument in one respect at least. For a mortgage securing a debt of Rs.5000/- stamp duty to the value of Rs.25 is payable. Now the currency of this mortgage may extend for several years with no further revenue accruing to the Government. In the case of a deposit of title deeds to secure a cash credit account for a like sum it may reasonably be assumed that a borrower will, at least, issue 16 cheques per month and thus in 25 months the full revenue payable on a mortgage is covered, and the duty receivable for every additional month, for which the credit is in operation, is thus a clear gain of revenue. As the Bank have granted hundreds of cash credits which have been in operation for over 3 years it is not difficult to percieve that the annual revenue payable on a cheque is more profitable to Government than the $\frac{1}{2}\%$ duty levyable on a mortgage deed. One important advantage in the deposit of title deeds lies in the fact that for a short term advance the charges payable on the loan are not raised by the $\frac{1}{2}\%$ duty levyable on a mortgage. Thus for a 3 months loan of Rs.5000 at 8% secured by the deposit of title deeds the interest would not exceed Rs.100 as against Rs.125 on a mortgage excluding legal fees. A loss of revenue to Government undoubtedly arises in such cases, but it should not be overlooked that the merchants prosperity is in more ways than one the Governments ultimate gain. Further, the secrecy that is possible in the case of an equitable deposit of title deeds is totally lacking in a mortgage which necessitates

the presence at the Registrars office of both the borrower and lender.

In conclusion I shall be pleased to call on the Chief Secretary next Thursday at 3.30 P.M., if convenient to him, to further discuss this matter with him.

Yours sincerely,


Manager.

1706
Copy of Proceedings of the All India Chambers of Commerce
to follow.

1901

1/19/17 ✓

G. R. S. VI—G/32]

SUBJECT.....
.....
.....

Diary No. of letter replied to

Section *Legis*
File No. *52-13*
Serial No. *11*

GENERAL AND REVENUE SECRETARIAT
()
, the 191 .)

S.O.
No. *72175*

Date of issue.....*19.12.17*.....

~~To~~
Dear sir

Signed by.....*M. G. Scrimivan*.....
ms

With reference to the last paragraph of your letter S/O date 17th Dec. 1917 regarding the new sub-clause (2) of clause 59 in the Transfer of Property Bill as amended by the Select Committee, I am desirous to inform you

over.

that as your letter
explains the situation
very clearly you need
not take the trouble of
~~going over here to see~~
the chief secretary to Govt
on the point

Yours sincerely

Es

19/12

20

W. C. Rose Esq

Manager

Bank of Mysore, Bangalore

List of enclosures.

Copied by

Examined by

Legis 52-13-12

71408

ALL COMMUNICATIONS TO BE ADDRESSED

TO THE MANAGER.

The Bank of Mysore, Ltd.,

POST BOX No. 37.

No. *Do*

Bangalore, 20th Dec. 1917

GEN. & REV. SECRETARIAT
III
JUDICIAL
20 DEC 1917



Immediati

Dear Mr. Sreenivasa Iyer,

I have your letter of the 19th inst.

No. J2175 contents of which I note with
thanks.

I now send you herewith Proceedings
of the Conference of Indian & Ceylon
Chambers of Commerce held in January 1905
for your perusal and shall be glad if
you will kindly return it when done with
as the same has been obtained on loan.

Yours sincerely,

G. Sreenivasa Iyer

G. Sreenivasa Iyer, Esq.
Secretary, Legislative Dept.

DRAFT.

SUBJECT.....

Diary No. of letter replied to.....

W 570

GENERAL AND REVENUE SECRETARIAT,

()

, the.....191 .

Date of issue.....15/3/18

Signed by.....M. G. Srinivas

May this be—

- (i) Printed?
- (ii) Treated as a standing order?
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Section. *Legis*
File No. 52-13
Serial No. 13

Proceedings of the Government of
H. H. the Maharaja of Mysore.

Order No. *3806*

Ordered that the accompanying.....

*Transfer of Property
Regulation*

which received the assent of His High-
ness the Maharaja, on the.....14th.....

day of.....*March*.....1918 ,

be published as Regulation No. *IV* of 1918

~~and~~ , in the Mysore Gazette for gene-
ral information.

Secretary to Government.

To

The Compiler, Mysore Gazette, for
publication in Part III of the Gazette, in
English and Kannada and for supply of
.....200.....spare copies in English, and
.....200.....spare copies in Kannada to
this office, and.....300.....spare copies
in English and.....200.....spare copies
in Kannada to the Curator, Government
Central Book Depot, Bangalore. Proofs
should be sent to this office for approval
before publication. *The Regulation should be
printed in both parts.*

7209

NOTIFICATION.

No. 287—L. C., dated 1st February 1916.

Under Rule 31 of the Rules for the conduct of business of the Mysore Legislative Council the following Bill to amend the law relating to the Transfer of Property by Act of Parties, is published for general information together with a statement of objects and reasons.

By Order,
G. SREENIVASA IYER,
Secretary, Mysore Legislative Council.

THE TRANSFER OF PROPERTY BILL.

(As finally passed by the Legislative Council on 21/2/18)

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THE SCHEDULE.

A Bill to amend the law relating to the Transfer of Property by Act of Parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; His Highness the Maharaja is pleased to enact as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

- Short title. 1. This Regulation may be called the Transfer of Property Regulation.
- Commencement. It shall come into force on the first day of *July 1918*.
- Extent. It extends to the whole of Mysore.
2. ~~The enactment specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein~~
- Repeal. contained shall be deemed to affect—
- Saving of certain enactments, incidents, rights, liabilities, etc. (a) the provisions of any enactment not hereby expressly repealed:
- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Regulation and are allowed by the law for the time being in force:
- (c) any right or liability arising out of a legal relation constituted before this Regulation comes into force, or any relief in respect of any such right or liability: or
- (d) save as provided by section 57 and Chapter IV of this Regulation any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction:
- and ^{save as provided in sections 13 and 16} nothing in the second chapter of this Regulation shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.
3. In this Regulation, unless there is something repugnant in the subject or context,—
- Interpretation clause. “immovable property” does not include standing timber, growing crops or grass:
- “instrument” means a non-testamentary instrument:
- “registered” means registered in Mysore under the law for the time being in force regulating the registration of documents:
- “attached to the earth” means—
- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:
- “actionable claim” means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;
- and a person is said to have “notice” of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, Section 229.
- Enactments relating to contracts to be taken as part of Contract Act. 4. The chapters and sections of this Regulation which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

And sections 54, paragraphs 2 and 3, 59, 94 and 110 shall be read as supplemental to the Mysore Registration Regulation, 1903.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) *Transfer of Property whether movable or immovable.*

5. In the following sections "transfer of property" means an act by which a living person conveys property in present, or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

6. Property of any kind may be transferred, except as otherwise provided by this Regulation or by any other law for the time being in force.

- (a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.
- (b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.
- (c) An easement cannot be transferred apart from the dominant heritage.
- (d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.
- (e) A mere right to sue cannot be transferred.
- (f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.
- (g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.
- (h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872, or (3) to a person legally disqualified to be transferee.
- (i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy or the farmer of an estate in respect of which default has been made in paying revenue to assign his interest as such tenant or farmer.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property, not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof.

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee) but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immovable property, the enjoyment of another piece of such property or to compel the enjoyment thereof in a particular manner.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.
~~not being a person governed by the Hindu law~~
 A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. (1) No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

"Subject to the limitation specified in sub-section 1, no transfer *inter vivos* of property by a Hindu shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such transfer."

Provided that where a transfer as aforesaid is made by a person governed by the Hindu Law, the interest created for the benefit of a person not in existence at the date of the transfer shall take effect notwithstanding that it does not extend to the whole of the remaining interest of the transferor in the property.

16. Where an interest fails by reason of any of the rules contained in sections 13, 14 and 15, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of a prior transfer.

17. The restrictions in sections 14, 15 and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Transfer in perpetuity for benefit of public.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Direction for accumulation.

Exception.—Where the property is immoveable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made has elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

When unborn person acquires vested interest on transfer for his benefit.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Contingent interest.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer to members of a class who attain a particular age.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer contingent on happening of specified uncertain event.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.
- Transfer to such of certain persons as survive at some period not specified.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.
- Conditional transfer.

Illustrations.

- (a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.
- (b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.
- (c) A transfers Rs. 500 to B on condition that he shall murder C. The transfer is void.
- (d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property imposed a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.
- Fulfilment of condition precedent.

Illustrations.

- (a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.
- (b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.
- Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

- (a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.
- (b) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property, an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life, as if no condition had been inserted.

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act, time being specified.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Apportionment of benefit of obligation on severance.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes, unless and until the Government by notification in the official Gazette so directs.

Illustrations.

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of Immovable Property.

38. Where any person, authorised only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Transfer by person authorised only under certain circumstances to transfer.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the

Transfer where third person entitled to maintenance.

transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands

Illustration.

A, a Hindu, transfers Sultanpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immoveable property legally transfers by one co-owner, a competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling house belonging to an undivided family, is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B, and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in Mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage, by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the active prosecution in any Court having authority in Mysore, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part promised.
Sale "defined."

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.
Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.
Contract for sale.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:
Rights and liabilities of buyer and seller.

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, ^{and} the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom, as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

- (a) to the rents and profits of the property till the ownership thereof pass to the buyer;
- (b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

- (a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;
- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;
- (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
- (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
- (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

56. Where several properties are subject to a common charge and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other properties, so far as such properties will extend.

Sale of one of several properties subject to a common charge.

Discharge of Incumbrances on Sale.

57. (a) Where immoveable property, subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

Provision by Court for incumbrance and sale free therefrom.

(1) in the case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities authorised by the Government, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (2) any other Court which the Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage," "mortgagor," "mortgagee," "mortgage money" and "mortgage deed" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(2) Notwithstanding anything contained in sub-section (1) of this section, a mortgage of immovable property in favour of a Bank may, in any area to which this provision may be extended by Government by notification in the official Gazette, be effected by delivery to the Bank or its authorised agent of documents of title relating to such property accompanied by a memorandum in writing signed by the debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorised agent is delivered or transmitted by registered post within ten days of the delivery to the Bank as aforesaid of the memorandum to every registering officer within whose District or Sub-district the whole or any portion of such property is situated, or, where a special registering officer is appointed or designated by Government in this behalf, to such registering officer; and such registering officer shall thereupon file the copy in his Book No. 1.

Explanation.—“Bank” in this sub-section means an association or company with limited liability formed principally for the purpose of engaging on the business of banking, and registered under the provisions of the law relating to companies for the time being in force:

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage.

(c) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller.

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary mortgage.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

English mortgage.

59. ~~Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.~~

Mortgage when to be by assurance.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

~~In such areas as Government may by notification declare, a mortgage may be created by delivery to a creditor or his agent, of documents of title to immoveable property with intent to create a security thereon.~~

Rights and Liabilities of Mortgagor.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Right of mortgagor to redeem.

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed

or on deposit in court as hereinafter provided

to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property,—

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid :

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money, or deposits it in Court as hereinafter provided.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the lease.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same ;

- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;
- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale: or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

where he is authorised to appoint the rents and properties in payment of the principal money or partly in lieu of interest and partly in payment of the principal money,

- (c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or
- (d) to authorize a person interested, in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

Right to sue for mortgage-money.

- (a) where the mortgagor binds himself to repay the same;
- (b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

70 69. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Accession to mortgaged property.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

71 70. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged lease.

72 71. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

Rights of mortgagee in possession.

- (a) for the due management of the property and the collection of the rents and profits thereof;
- (b) for its preservation from destruction, forfeiture or sale
- (c) for supporting the mortgagor's title to the property.
- (d) for making his own title thereto good against the mortgagor; and
- (e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf.

in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

73 72. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereof of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

74 73. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

75 74. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

76 75. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own;
- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in re-instating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any)

from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter be debited with the loss, if any, occasioned by such failure.

Loss occasioned by his default

77-76. Nothing in section 75, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of the interest on the principal money or in lieu of such interest and defined portions of the principal.

Receipts in lieu of interest.

Priority.

78-77. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Postponement of prior mortgagee.

79-78. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum though made or allowed with notice of the subsequent mortgage.

Mortgage to secure uncertain amount when maximum is expressed.

Illustration.

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co., does not exceed Rs. 5,000. B & Co., subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000 to priority over C.

80-79. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee, making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Tacking abolished.

Marshalling and Contribution.

81 "(1) If the owner of two or more properties mortgages more than one of them to one person and then mortgages to another person one or more but not all of the properties already mortgaged, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property or properties not mortgaged to the second mortgagee so far as such property or properties will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in any of the properties mortgaged."

(2) The benefit of sub-section (1) applies mutatis mutandis to a person who purchases some of several properties previously mortgaged to another person.

Order XXXIV of the Code of Civil Procedure

the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

82.81. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section ⁸¹80 to the claim of the second mortgagee *or subsequent purchaser.*

Deposit in Court.

83 82: At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagee, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of claims) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money; and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

84 83: When the mortgagor or such other person as aforesaid has tendered or deposited in Court under Section 82 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section or in section ⁸³82 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money.

Redemption.

91 84: Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

- (a) any person (other than the mortgagee of the interest sought to be redeemed), having any interest in or charge upon the property;
- (b) any person having any interest in or charge upon the right to redeem the property;
- (c) any surety for the payment of the mortgage-debt or any part thereof;
- (d) the guardian of the property of a minor mortgagor on behalf of such minor;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

any part of thereof

(h) any other person who, in any other manner, may become entitled to any interest in the property or any part thereof.

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(f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property

(g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property, and

98 85. Where one of several mortgagors redeems the mortgaged property and

Charge of one of several co-mortgagors who redeems.

acquires all the rights and powers of the mortgagee
~~obtains possession thereof; he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.~~
where he obtains possession of the property also of the expenses properly incurred in so obtaining possession
Anomalous Mortgages.

98 86. In the case of a mortgage not being a simple mortgage, a mortgage by

Mortgage not described in conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and

and (e). third, or the second and third, of such forms the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

100 87. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to

Charges

another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 86 and 87 shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101 88. Where the owner of a charge or other incumbrance on immovable property is or becomes absolutely entitled to that property,

Extinguishment of charges.

the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Subject to the Notice and Tender.

102 89. Where the person on or to whom any notice or tender is to be served or

Service or tender on or to agent.

made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103 90. Where, under the provisions of this Chapter, a notice is to be served on

Notice, etc., to or by person incompetent to contract.

or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions

of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purposes of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Order XXXII of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

- 104 91. The Chief Court may, from time to time, make rules consistent with this Regulation for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.
- Power to make rules.

CHAPTER V

OF LEASES OF IMMOVABLE PROPERTY.

- 105 92. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity in consideration of price paid or promised, or of money, share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
- Lease defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other things to be so rendered is called the rent.

Lessor, lessee, premium and rent defined.

- 106 93. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.
- Duration of certain leases in absence of written contract or local usage.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

- 107 94. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.
- Leases how made.
- Subject to the proviso to clause (d) of section 17 of the Mysore Registration Regulation, 1923*

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession;

Provided that the Government may from time to time, by notification in the official Gazette, direct that leases of immoveable property, other than leases from year to year or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

- 108 95. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—
- Rights and liabilities of lessor and lessee.

A) Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(b) the lessor is bound on the lessee's request to put him in possession of the property :

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested

(B) Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(g) if the lessor neglects to make any payment which he is bound to make, and which if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth : provided he leaves the property in the state in which he received it :

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorize a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of Government, to assign his interest as such tenant, farmer or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and

give or leave notice of any defect in such condition; and, when, such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes:

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109 96. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property, or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110 97. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111 98. A lease of immoveable property determines—
Determination of lease.

- (a) by efflux of the time limited thereby:
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event:
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

- (d) in case the interests of the lessee and the lessor in the whole of the "property become vested at the same time in one person in the same right:
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:
- (f) by implied surrender:
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in—
—himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112 99. A forfeiture under section 98, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor, showing an intention to treat the lease as subsisting:

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113 100. A notice given under section 98, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114 101. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture for non-payment of rent.

115 102. The surrender, express or implied, of a lease of immoveable property does not prejudice an underlease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

Effect of surrender and forfeiture on under-leases.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 101. ~~114~~

~~116 103~~ If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 93. ~~106~~

Effect of holding over.

Illustrations.

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

~~117 104~~ None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the Government may, by notification published in the official Gazette, declare all or any of such provisions to be so applicable in the case of all or any of such leases together with, or subject to, those of the local law; if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

Exemption of leases for agricultural purposes.

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of all or any of such leases together with, or subject to, those of the local law; if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

~~118 105~~ When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

Exchange "defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

~~119 106~~ In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

Right of party deprived of thing received in exchange.

thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return

of the thing transferred by him.

~~120 107~~ Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Rights and liabilities of parties.

is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

~~121 108~~ On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF GIFTS.

~~122 109~~ "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

"Gift" defined.

property made voluntarily and without consideration, by one person, called the donor, to another, called the

donee, and accepted by or on behalf of the donee.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.
Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

123. 110. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.
Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. 111. A gift comprising both existing and future property, is void as to the latter.
Gift of existing and future property.

125. 112. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.
Gift to several, of whom one does not accept.

126. 113. The donor and donee may agree that on the happening of any specified event, which does not depend on the will of the donor, a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.
When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want, or failure, of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

127. 114. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.
Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.
Onerous gift to disqualified person.

Illustrations.

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let

for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuse to accept the lease. He does not by this refusal forfeit the money.

¹²⁷
128-115. Subject to the provisions of section 114, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.
Universal donee.

129-116. Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section 110, any rule of Hindu or Buddhist law.
Saving of donations *mortis causa* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130-117. (1) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine, or fire policy of insurance.

Illustrations.

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 118, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 117 and to the provisions of section 119. ¹³²

131-118. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.
Notice to be in writing, signed.

132-119. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.
Liability of transferee of actionable claim.

Illustrations.

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B, for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B, under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133 120. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary applies only to his solvency at the time of the transfer and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134 121. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

135 122. Every assignee, by endorsement or other writing, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

136 123. No Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

137 124. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

THE TRANSFER OF PROPERTY REGULATION.

NO. IV OF 1918.

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REGULATION No. IV OF 1918.

A Regulation to amend the law relating to the Transfer of Property by Act of Parties.

(Received the assent of His Highness the Maharaja on the 14th day of March 1918.)

Preamble. WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; His Highness the Maharaja is pleased to enact as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Regulation may be called the Transfer of Property Regulation.

Commencement. It shall come into force on the first day of July 1918.

Extent. It extends to the whole of Mysore.

Repeal. 2. Nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, etc. (a) the provisions of any enactment not hereby expressly repealed:

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Regulation and are allowed by the law for the time being in force:

(c) any right or liability arising out of a legal relation constituted before this Regulation comes into force, or any relief in respect of any such right or liability: or

(d) save as provided by section 57 and Chapter IV of this Regulation any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction:

and save as provided in sections 13 and 14,

nothing in the second chapter of this Regulation shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.

Interpretation clause. 3. In this Regulation, unless there is something repugnant in the subject or context,—

“immovable property” does not include standing timber, growing crops or grass:

“instrument” means a non-testamentary instrument:

“registered” means registered in Mysore under the law for the time being in force regulating the registration of documents:

“attached to the earth” means—

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

and a person is said to have “notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

Enactments relating to contracts to be taken as part of Contract Act.

4. The chapters and sections of this Regulation which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Mysore Registration Regulation, 1903.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) *Transfer of Property whether movable or immovable.*

5. In the following sections "transfer of property" means an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

6. Property of any kind may be transferred, except as otherwise provided by this Regulation or by any other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872, or (3) to a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, or the farmer of an estate in respect of which default has been made in paying revenue, to assign his interest as such tenant or farmer.

7. Every person competent to contract and entitled to transferable property or authorized to dispose of transferable property, not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith.

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee) but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the

9. A transfer of property may be made without writing in every case in which
Oral transfer. a writing is not expressly required by law.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming
Condition restraining alienation. under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or change the same or her beneficial interest therein.

11. Where, on a transfer of property, an interest therein is created absolutely
Restriction repugnant to interest created. in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immovable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for
Condition making interest determinable on insolvency or attempted alienation. the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the
Transfer for benefit of unborn person. benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property. Provided that where a transfer as aforesaid is made by a person governed by the Hindu Law, the interest created for the benefit of a person not in existence at the date of the transfer shall take effect notwithstanding that it does not extend to the whole of the remaining interest of the transferor in the property.

Illustration.

A, not being a person governed by the Hindu Law, transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. (1) No transfer of property can operate to create an interest which is to
Rule against perpetuity. take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

(2) Subject to the limitation specified in sub-section (1), no transfer *inter vivos* of property by a Hindu shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such transfer.

15. If, on a transfer of property, an interest therein is created for the benefit
Transfer to class some of whom come under sections 13 and 14. of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

16. Where an interest fails by reason of any of the rules contained in sections 13, 14 and 15, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior transfer.

17. The restrictions in sections 14, 15 and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Transfer in perpetuity for benefit of public.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of, as if no accumulation had been directed.

Direction for accumulation.

Exception.—Where the property is immovable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date, and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

When unborn person acquires vested interest on transfer for his benefit.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Contingent interest.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer to members of a class who attain a particular age.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer contingent on happening of specified uncertain event.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations.

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that he shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. When the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall

pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section 12, on a transfer of property, an interest therein may be created with the condition super-added that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration, to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person, taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his own capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver, shall in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does

not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Government by notification in the official Gazette so directs.

Illustrations

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A, B, C and D severally, require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of Immovable Property

38. Where any person, authorised only under circumstances in their nature variable to dispose of immovable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration

A, a Hindu widow, whose husband has left collateral heirs alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immovable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of such intention, nor against such property in his hands.

Illustration

A, a Hindu, transfers Sultanpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Where a person transfers any immovable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields, Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immovable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively, entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immovable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura and B and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in Mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money B and C to receive Rs. 400.

47. Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two anna-share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss, or damage may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the

transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. "During the active prosecution in any Court having authority in Mysore, of a contentious suit or proceeding in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Transfer of property pending suit relating thereto. 53. Every transfer of immovable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immovable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part promised.

Sale how made. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer or such person as he directs, in possession of the property.

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, and the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same.

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power.

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

- (a) to the rents and profits of the property till the ownership thereof pass to the buyer;
- (b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property, in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

- (a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;
- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs; provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;
- (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
- (d) where the ownership of the property has passed to the buyer as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
- (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

56. Where several properties are subject to a common charge and one of the properties is sold, the buyer is as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other properties, so far as such properties will extend.

Sale of one of several properties subject to a common charge.

Discharge of Incumbrances on Sale.

57. (a) Where immovable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

Provision by Court for incumbrance and sale free therefrom.

- (1) in the case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities authorised by the Government, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and
- (2) in any other case, of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (2) any other Court which the Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES

58. (a) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

Mortgage, mortgagee, "mortgage-money" and "mortgage deed" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) Where the mortgagor ostensibly sells the mortgaged property—
 Mortgage by conditional sale.
 on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or
 on condition that on such payment being made the sale shall become void, or
 on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the principal-money, or partly in lieu of interest and partly in payment of the principal-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

English mortgage.
 Mortgage when to be by assurance.

59. A mortgage can be effected only by a registered instrument.

(2) Notwithstanding anything contained in sub-section (1) of this section, a mortgage of immovable property in favour of a Bank may, in any area to which this provision may be extended by Government by notification in the official Gazette, be effected by delivery to the Bank or its authorised agent of documents of title relating to such property accompanied by a memorandum in writing signed by the debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorised agent is delivered or transmitted by registered post within ten days of the delivery to the Bank as aforesaid of the memorandum to every registering officer, within whose District or Sub-district the whole or any portion of such property is situated; or, where a special registering officer is appointed or designated by Government in this behalf, to such registering officer, and such registering officer shall thereupon file the copy in his Book No. 1.

Explanation.—"Bank" in this sub-section means an association or company with limited liability formed principally for the purpose of engaging on the business of banking, and registered under the provisions of the law relating to companies for the time being in force.

Rights and Liabilities of Mortgagor

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, or on deposit in Court as hereinafter provided to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Right of mortgagor deem. Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims

Right to redeem one of several mortgages.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property,—

Right of usufructuary mortgagor to recover possession.

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid:

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession to mortgaged property.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

Accession acquired in virtue of transferred ownership.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;
- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;
- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for

- foreclosure or sale, where he is authorized to appropriate the rents and profits in payment of the principal money, or partly in lieu of interest and partly in payment of the principal money, or a mortgagee by conditional sale as such to institute a suit for sale; or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or
 - (c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or
 - (d) to authorize a person interested, in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

- (a) where the mortgagor binds himself to repay the same;
- (b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

- (a) for the due management of the property and the collection of the rents and profits thereof;
- (b) for its preservation from destruction, forfeiture or sale;
- (c) for supporting the mortgagor's title to the property;
- (d) for making his own title thereto good against the mortgagor; and
- (e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the

principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereof of the said arrears; for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgagee has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

75. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own;
- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, and all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in re-instating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof,

shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the principal money and, so far as such receipts exceed any interest due, in reduction or discharge of the principal-money; the surplus, if any, shall be paid to the mortgagor;

- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under Order XXXIV of the Code of Civil Procedure be debited with the loss, if any, occasioned by such failure.

Loss occasioned by his default.

77. Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Receipts in lieu of interest.

Priority.

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Postponement of prior mortgagee.

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum though made or allowed with notice of the subsequent mortgage.

Mortgage to secure uncertain amount when maximum is expressed.

Illustration.

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co., of the second mortgage. At the date of the second mortgage, the balance due to B & Co., does not exceed Rs. 5,000. B & Co., subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co., are entitled, to the extent of Rs. 10,000 to priority over C.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Tacking abolished.

Marshalling and Contribution.

81. (1) If the owner of two or more properties mortgages more than one of them to one person and then mortgages to another person one or more but not all of the properties already mortgaged, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property or properties not mortgaged to the second mortgagee so far as such property or properties will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in any of the properties mortgaged.

Marshalling securities.

(2) The benefit of sub-section (I) applies *mutatis mutandis* to a person who purchases some of several properties previously mortgaged to another person.

Where several properties, whether of one or several owners, or mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee or subsequent purchaser.

Deposit in Court.

83. At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money.

Redemption.

91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of the mortgaged property:—

- (a) any person (other than the mortgagee of the interest sought to be redeemed), having any interest in or charge upon the property or any part thereof;
- (b) any person having any interest in or charge upon the right to redeem the property;
- (c) any surety for the payment of the mortgage-debt or any part thereof;
- (d) the guardian of the property of a minor mortgagor on behalf of such minor;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;
- (f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;
- (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property; and

(h) any other person who, in any other manner, may become entitled to any interest in the property or any part thereof.

95. Where one of several mortgagors redeems the mortgaged property he acquires all the rights and privileges of the mortgagee, in the share of each of the other co-mortgagors in the property for that co-mortgagor's proportion of the mortgage money and other expenses properly incurred in so redeeming and where he obtains possession of the property also, of the expenses properly incurred in so obtaining possession.

Anomalous Mortgages.

98. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

Charges.

100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101. Where the owner of a charge or other incumbrance on immovable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Notice and Tender.

102. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served on or by, and such tender or deposit made, accepted or taken by, the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit

might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Order XXXII of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

104. The Chief Court may, from time to time, make rules consistent with this Regulation for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

CHAPTER V.

OF LEASES OF IMMOVABLE PROPERTY.

105. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

106. In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice, expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice, expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. Subject to the proviso to clause (a) of Section 17 of the Mysore Registration Regulation, 1903, a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession;

Provided that the Government may from time to time, by notification in the official Gazette, direct that leases of immovable property, other than leases from year to year or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following or such of them as are applicable to the property leased:-

(A) Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover.

(b) the lessor is bound on the lessee's request to put him in possession of the property :

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(g) if the lessor neglects to make any payment which he is bound to make, and which if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(h) the lessee may remove, at any time during the continuance of the lease all things which he has attached to the earth : provided he leaves the property in the state in which he received it :

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of Government, to assign his interest as such tenant, farmer or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor :

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him.

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

111. Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. A lease of immovable property determines—

Determination of lease.

- (a) by efflux of the time limited thereby;
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event;
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;
- (f) by implied surrender;
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease:

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress of such rent or by any other act on the part of the lessor, showing an intention to treat the lease as subsisting:

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section 111 clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it, showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

115. The surrender, express or implied, of a lease of immovable property does not prejudice an underlease of the property or any part thereof previously granted by the lessee on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Effect of holding over.

Illustrations:

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the Government may, by notification published in the official Gazette, declare all or any of such provisions to be so applicable in the case

Exemption of leases for agricultural purposes.

of all or any of such leases together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES:

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

Exchange" defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

Right of party deprived of thing received in exchange.

120. Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Rights and liabilities of parties.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF GIFTS:

122. "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Gift" defined.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor.

Transfer how effected.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. A gift comprising both existing and future property is void as to the latter.

Gift, of existing and future property

125. A gift of a thing to two or more donees, of whom one does not accept it is void as to the interest which he would have taken had he accepted.

Gift to several, of whom one does not accept.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property, given, he becomes so bound.

Onerous gift to disqualified person.

Illustrations.

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuse to accept the lease. He does not by this refusal forfeit the money.

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Universal donee.

129. Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section 123, any rule of Hindu or Buddhist law.

Saving of donations *mortis causa* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. (1) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not.

Transfer of actionable claim.

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Illustrations:

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132.

131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

132. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations:

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B, for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Where the debt is transferred for the purpose of securing an existing or future debt, the debt so transferred if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

135. Every assignee, by endorsement or other writing, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

136. No Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments, which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression "mercantile document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

M: VISVESVARAYA,

Dewan

File copy

NOTIFICATION.

No. 287—L. C., dated 1st February 1916.

Under Rule 31 of the Rules for the conduct of business of the Mysore Legislative Council the following Bill to amend the law relating to the Transfer of Property by Act of Parties, is published for general information together with a statement of objects and reasons.

By Order,
G. SREENIVASA IYER,
Secretary, Mysore Legislative Council.

THE TRANSFER OF PROPERTY BILL.

*(As amended by the Select Committee
and passed by the Legislative Council on 21/2/18)*
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A Bill to amend the law relating to the Transfer of Property by Act of Parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; His Highness the Maharaja is pleased to enact as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Regulation may be called the Transfer of Property Regulation.

Commencement.

It shall come into force on the first day of

Extent.

It extends to the whole of Mysore.

Repeal.

2. ~~The enactment specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But~~ Nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, etc.

(a) the provisions of any enactment not hereby expressly repealed:

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Regulation and are allowed by the law for the time being in force:

(c) any right or liability arising out of a legal relation constituted before this Regulation comes into force, or any relief in respect of any such right or liability: or

(d) save as provided by section 57 and Chapter IV of this Regulation any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction:

and ^{save as provided in sections 13 and 14} nothing in the second chapter of this Regulation shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.

Interpretation clause.

3. In this Regulation, unless there is something repugnant in the subject or context,—

“immovable property” does not include standing timber, growing crops or grass:

“instrument” means a non-testamentary instrument:

“registered” means registered in Mysore under the law for the time being in force regulating the registration of documents:

“attached to the earth” means—

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

and a person is said to have “notice” of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, Section 229.

Enactments relating to contracts to be taken as part of Contract Act.

4. The chapters and sections of this Regulation which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

And sections 54, paragraphs 2 and 3, 59, ¹⁰⁷ 94 and ¹²³ 110 shall be read as supplemental to the Mysore Registration Regulation 1903.

CHAPTER 11.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) *Transfer of Property whether movable or immovable.*

5. In the following sections "transfer of property" means an act by which a living person conveys property in present or in future, to one or more ^{other} living persons, or to himself and one or more living persons: and "to transfer property" is to perform such act.

What may be transferred. 6. Property of any kind may be transferred, except as otherwise provided by this Regulation or by any other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872, or (3) to a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy or the farmer of an estate in respect of which default has been made in paying revenue to assign his interest as such tenant or farmer.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property, not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee) but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Restriction repugnant to interest created.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immovable property, the enjoyment of another piece of such property or to compel the enjoyment thereof in a particular manner.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Condition making interest determinable on insolvency or attempted alienation.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Transfer for benefit of unborn person.

Illustration
A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuity.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

Transfer to class some of whom come under sections 13 and 14.

Provided that where a transfer as aforesaid is made by a person governed by the Hindu law, the interest created for the benefit of a person not in existence at the date of the transfer shall take effect notwithstanding that it does not extend to the whole of the remaining interest of the transferor in the property.

(1) This section shall apply also to the transfer of property by persons governed by the Hindu law.

(2) Subject to the limitation specified in sub-section (1) no transfer inter vivos of property by a Hindu shall be ~~an~~ invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such transfer.

16. Where an interest fails by reason of any of the rules contained in sections 13, 14 and 15, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. The restrictions in sections 14, 15 and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made has elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.
- Transfer to such of certain persons as survive at some period not specified.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.
- Conditional transfer.

Illustrations.

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that he shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property imposed a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.
- Fulfilment of condition precedent.

Illustrations.

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.
- Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

(b) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

Ulterior transfer conditional on happening or not happening of specified event.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act, time being specified.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Government by notification in the official Gazette so directs.

Illustrations.

(a) A sells to B, C and D, a house situate in a village and leased to E, at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of Immovable Property.

38. Where any person, authorised only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the

transfer is gratuitous; but not against a transferee for consideration and without notice of ^{such intention} the right, nor against such property in his hands.

Illustration.

A, a Hindu, transfers Sultanpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B, and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in Mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mouza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage, by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the active prosecution in any Court having authority in Mysore, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part promised.
 "Sale" defined.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.
 Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.
 Contract for sale.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities; and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:
 Rights and liabilities of buyer and seller.

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
- (g) to pay all public charges, and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

- (a) to the rents and profits of the property till the ownership thereof pass to the buyer;
- (b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

- (a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;
- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;
- (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
- (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
- (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

56. Where several properties are subject to a common charge and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other properties, so far as such properties will extend.

Sale of one of several properties subject to a common charge.

Discharge of Incumbrances on Sale.

57. (a) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

Provision by Court for incumbrance and sale free therefrom.

(1) in the case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities authorised by the Government, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (2) any other Court which the Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

Mortgage, i. e. "mortgagor" mortgagee, "mortgage money," and "mortgage deed" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(2) Notwithstanding anything contained in Sub Section (1) of this Section, a mortgage of immovable property in favour of a Bank may, in any area to which this provision may be extended by Government in by notification in the official Gazette, be effected by delivery to the Bank or its authorised agent of documents of title relating to such property accompanied by a memorandum in writing signed by the -- debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorised agent is delivered or transmitted by -- registered post within ten days of the execution of the memorandum to every registering officer within whose District or Sub District the whole or any portion of such property is situated, or, where a special registering officer is appointed or designated by Government in this --- behalf, to such registering officer; and such registering officer shall thereupon file the copy in his Book No.1.

Explanation. - "Bank" in this Sub Section means an association or Company with -- limited liability formed principally for the purpose of engaging in the business of Banking, and registered under the provisions of the law relating to Companies for the time being in

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller.

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

In such areas as Government may by notification declare, a mortgage may be created by delivery to a creditor or his agent, of documents of title to immoveable property with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed

or on deposit in Court as hereinafter provided

to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment to tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him; or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property,—

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the lease.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;
- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale: or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

where he is authorised to appropriate the rents and profits in payment of the principal money or partly in lieu of interest and partly in payment of the principal money;

- (c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or
- (d) to authorize a person interested, in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

- (a) where the mortgagor binds himself to repay the same;
- (b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

70 69. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Accession to mortgaged property:

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

71 70. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged lease.

72 71. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

Rights of mortgagee in possession.

- (a) for the due management of the property and the collection of the rents and profits thereof;
- (b) for its preservation from destruction, forfeiture or sale;
- (c) for supporting the mortgagor's title to the property;
- (d) for making his own title thereto good against the mortgagor; and
- (e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf.

in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

~~73~~ ~~72~~. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereof of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Charge on proceeds of revenue sale.

~~74~~ ~~73~~. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right of subsequent mortgagee to pay off prior mortgagee.

~~75~~ ~~74~~. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mesne mortgagee against prior and subsequent mortgagees.

~~76~~ ~~75~~. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

Liabilities of mortgagee in possession.

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own;
- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in re-instating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any)

from time to time due to him on account of interest on the ~~mortgage~~ ^{principal} money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter be debited with the loss, if any, occasioned by such failure.

77 76. Nothing in section 75, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of the interest on the principal money or in lieu of such interest and defined portions of the principal.

Priority.

78 77. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79 78. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co., does not exceed Rs. 5,000. B & Co., subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000 to priority over C.

80 79. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

81 80. If the owner of two ^{or more} properties mortgages them ^{all of} to one person and then mortgages ^{one of} the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property ^{or properties} will extend, but not so as to prejudice the rights of

81(1) If the owner of two or more properties mortgages more than one of them to one person and then mortgages to another person one or more but not all of the properties already mortgaged, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property or properties not mortgaged to the second mortgagee so far as such property or properties will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in any of the properties mortgaged.

(2) The benefit of sub-section (1) applies *mutatis mutandis* to a person who purchases some of several properties previously ^{mortgaged to another} person.

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~~the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.~~

82 81. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section ⁸¹ 80 to the claim of the second mortgagee *or subsequent purchaser.*

Deposit in Court.

83 82. At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

84 83. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under Section 82 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section or in section 82 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money.

Redemption.

91 84. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

- Who may sue for redemption.
- (a) any person (other than the mortgagee of the interest sought to be redeemed), having any interest in or charge upon the property;
 - (b) any person having any interest in or charge upon the right to redeem the property;
 - (c) any surety for the payment of the mortgage-debt or any part thereof;
 - (d) the guardian of the property of a minor mortgagor on behalf of such minor;
 - (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(h) any other person who, in any other manner, may become entitled to any interest in any part of the property

(f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;

(g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property; and

91 85. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession ^{where he obtains possession of the property also} of the expenses properly incurred in so obtaining possession.

acquires all the rights and powers of the mortgagee

98 86. In the case of a mortgage not being a simple mortgage, a mortgage by Mortgage not described in conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and third, of such forms the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

100 87. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 80 and 81 shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101 88. Where the owner of a charge or other incumbrance on immovable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Notice and Tender.

102 89. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103 90. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted or taken by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions

of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purposes of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Order XXXII of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

~~104 91.~~ The Chief Court may, from time to time, make rules consistent with this Regulation for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

CHAPTER V.

OF LEASES OF IMMOVABLE PROPERTY.

~~105 92.~~ A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity in consideration of price paid or promised, or of money, share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Lessor, lessee, premium and rent defined.

~~106 93.~~ In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

~~107 94.~~ *Subject to the proviso to clause (d) of section 17 of the Mysore Registration Regulation, 1903.* A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

Leases how made.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession;

Provided that the Government may from time to time, by notification in the official Gazette, direct that leases of immovable property, other than leases from year to year or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

~~108 95.~~ In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

(A) Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(b) the lessor is bound on the lessee's request to put him in possession of the property :

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(g) if the lessor neglects to make any payment which he is bound to make, and which if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth : provided he leaves the property in the state in which he received it :

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorize a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of Government, to assign his interest as such tenant, farmer or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and

give or leave notice of any defect in such condition ; and; when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor :

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own ; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto :

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes :

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109 96. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it ; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110 97. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111 98. A lease of immoveable property determines—

Determination of lease.

- (a) by efflux of the time limited thereby :
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event :
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event :

- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right :
- (e) by express surrender ; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :
- (f) by implied surrender :
- (g) by forfeiture ; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or the lease shall become void ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; and in either case the lessor or his transferee does some act showing his intention to determine the lease
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112 99. A forfeiture under section 98, clause (g), is waived by acceptance or rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Waiver of forfeiture. 8

Provided that the lessor is aware that the forfeiture has been incurred.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113 100. A notice given under section 98, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114 101. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture ; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture for non-payment of rent.

115 102.—The surrender, express or implied, of a lease of immoveable property does not prejudice an underlease of the property, or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease ; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

Effect of surrender and forfeiture on under-leases.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 101. 111,

116 103. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 93. 106

Effect of holding over.

Illustrations.

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117 104. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the Government may, by notification published in the official Gazette, declare all or any of such provisions to be so applicable in the case of all or any of such leases together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

118 105. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

Exchange "defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119 106. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

Right of party deprived of thing received in exchange.

120 107. Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Rights and liabilities of parties.

121 108. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF GIFTS.

122 109. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

"Gift" defined.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.
Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

123 110. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.
Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124 111. A gift comprising both existing and future property is void as to the latter.
Gift of existing and future property.

125 112. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.
Gift to several, of whom one does not accept.

126 113. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.
When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

127 114. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.
Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.
Onerous gift to disqualified person.

Illustrations.

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let

for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuse to accept the lease. He does not by this refusal forfeit the money.

128 115. Subject to the provisions of section 114¹²⁷, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Universal donee.

129 116. Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section 110, any rule of Hindu or Buddhist law.

Saving of donations *mortis causa* and Muhammadan law.

123

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130 117. (1) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Illustrations.

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 118, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 117 and to the provisions of section 119.

131 118. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Notice to be in writing, signed.

132 119. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Liability of transferee of actionable claim.

Illustrations.

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B, for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133 120. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134 121. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

135 122. Every assignee, by endorsement or other writing, of a policy of marine insurance, or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

136 123. No Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

137 124. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

THE SCHEDULE.

Year and chapter	Subject	Extent of repeal
THE SCHEDULE.		
Number and year	Subject	Extent of repeal
I of 1877	Specific Relief.	In sections 35 and 36, the words “in writing.”

Statement of objects and reasons.

The question of introducing the Transfer of Property Act (IV of 1882) has been under the consideration of Government for a number of years. When in 1906 the Judges of the Chief Court were consulted, Mr. L. Moore, and Mr. P. S. Krishna Rao expressed themselves in favour of the introduction of the Act. The Judges of

the Chief Court were again consulted last year, and they recommend the introduction of the Act.

In the annual meetings of the Representative Assembly also, the members have been urging the introduction of the Act into the State.

The rules contained in the Act do not appear to be opposed to any law or practice in force in the State. The introduction of the Act will make certain transfers compulsorily registerable, and it is hoped that the chance of litigation and the opportunities for perjury in connection with sales of immoveable property will be reduced to a great extent by this means of compulsory registration. Further the argument that many of the principles of the Act are already recognised by the Mysore Courts is a powerful reason for the introduction of the Act, and the uncertainty and confusion in the existing law and practice may be avoided by the proposed enactment.

Copy Consult.

NOTIFICATION.

No. 259—L. C., dated 16th December 1916.

Under Rule 40 of the Rules for the conduct of business of the Mysore Legislative Council the following Report of the Select Committee appointed to consider the Transfer of Property Bill is published for general information together with a list shewing the amendments made in the Bill by them.

By Order,
G. SREENIVASA IYER,
Secretary, Mysore Legislative Council.

Report of the Select Committees on the Bill to amend the law relating to the Transfer of Property by Act of Parties.

We, the members of the Select Committee, appointed to consider the Bill to amend the law relating to the Transfer of Property by Act of Parties, have the honour to submit the following report to the Council.

2. We have subjected the provisions of the Bill to careful examination at several meetings, and as the result thereof have made various amendments in the Bill of which the more important are explained below.

3. *Numbering of Clauses.*—We have altered the numbering of the clauses in the Bill to correspond with the numbering in the Transfer of Property Act, as this will facilitate reference to the decisions of the British Indian High Courts on the Act in construing the corresponding provisions in the Bill when passed into law.

4. *Clause 2 and the Schedule.*—The reason for the amendment made by the Transfer of Property Act, 1882, in the Specific Relief Act, 1877, being difficult to find we have thought it right to omit the words “the enactment specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But” in section 2, as well as the schedule.

5. *Clauses 2, 13 and 14.*—We are strongly and unanimously of opinion that the disability imposed upon Hindus, as the result of the decision of the Privy Council in the Tagore case, followed by the Chief Court of Mysore, in the matter of dispositions in favour of unborn persons, should be removed, as the restriction in this respect is not in consonance with the principles of the Mitakshara law, and, as far as we know, is distinctly opposed to the general consciousness of the community. We consider that the present opportunity should be taken to amend the law by recognising the validity of transfers of property within certain limits in favour of persons not in existence at the date of the disposition, and in particular by the abrogation of the restriction which requires that a transfer in favour of a person not in existence should comprise the whole of the interest of the transferor in the property transferred, a restriction which prevents the creation, for instance of a life interest in favour of an unborn person with remainder in favour of the children of such unborn person. The Hindu Law in this respect has already been amended in Madras by Act I of 1914 and in Bengal by Act III of 1904 and a Bill on the same subject is now pending before the Imperial Legislative Council*. We have accordingly amended Sections 13 and 14 by the addition of clauses which give effect to

[This has since been passed as Act XV, 1916 G. S.]

the above view, and have also made a necessary consequential amendment in Section 2. We also recommend that the Indian Succession Act may likewise be suitably amended in order to bring the law of wills in this respect into conformity with the law of transfer *inter vivos*. When this is done persons following the Hindu Law will be placed on the same footing as persons belonging to other communities.

6. *Clause 39.*—The language of this clause in the Bill has been criticised as not being happily worded (*Vide* the judgment of Mr. Justice Beaman in *Jamna Bai v. Nana Bhai* 12 Bom. L. R. 1075). The law itself is clear that the interest of a transferee for value is not defeated by mere notice on his part of the right affected by such transfer, but that it is also necessary to prove he had notice of the fraudulent intention of the transferor to defeat such right. The words "Notice of such intention" have accordingly been substituted for the words "Notice of the right."

7. *Clauses 59 and 123.*—As the first two paragraphs of clause 59 stand, a registered instrument is necessary for effecting a mortgage if the value of the principal money is 100 rupees or upwards; and registration is also compulsory in other cases if an instrument in writing is relied upon. At the same time, where the principal amount secured is less than 100 rupees, a mortgage is allowed to be effected in certain cases by delivery of the property; but as this is also one of the modes of effecting a sale, and it is undesirable to leave the intention of parties to be proved by oral evidence, we have thought it preferable to insist on registered instruments in all cases of mortgages and have altered the clause accordingly. We may observe in justification of our action that the Registration Law has been in force in the State for over half a century, that the public are fully alive to the advantages of registration and that no undue inconvenience is likely to be caused to the public since the majority of mortgages effected are simple mortgages which in any case require to be compulsorily registered. Further, as observed by Sir Asutosh Mukherjee in the Imperial Legislative Council in regard to this point, the position taken in the British Indian Act does not appear to be either satisfactory or defensible in principle, and the amount of the principal should not be the sole determining factor.

As regards the requirement of attestation in this clause, we find that there was some divergence of views as to the interpretation of the term among the British Indian High Courts till the recent decision of the Privy Council in *Shama Pattar Vs. Abdul Khadar* 35 Madras, 607. The interpretation laid down by the Privy Council has however been adversely criticised as leading to grave inconvenience and injustice in practice, and it has therefore been proposed in British India to insert a new definition of "attest" to meet the difficulty. In our opinion, however, it is unnecessary to prescribe any definite statutory obligation at all in respect of attestation, especially as such documents are as a matter of fact almost invariably attested. We have accordingly omitted the words "and signed by the mortgagor and attested by at least two witnesses" in this clause.

For the same reason we have omitted the words "and attested by at least two witnesses" in clause 123. 2

8. We have carefully examined the third paragraph of clause 59, in regard to the creation of mortgages by delivery of title deeds, and are of opinion that the clause as it stands in the Bill is too wide, and that, on the one hand, the benefit of the provision should be given only to *bona fide* banks with limited liability registered under the Companies Regulation and having their offices in special areas to which it may be extended by Government, and that, on the other, some method should be devised for safe-guarding the interests of subsequent mortgagees and purchasers, if any. We have accordingly replaced the original paragraph by a new clause which provides that the delivery of title-deeds shall be accompanied by a memorandum in writing specifying the property affected and the amount of credit given or agreed to be given, and that a copy of the memorandum under the seal of the bank and signature of its authorised agent shall be transmitted to the proper registering officer to be filed in his Book No. I. This, it will be seen, is analogous to the procedure in Section 89 of the Registration Regulation, and will obviate the necessity for personal attendance on the part of the executant.

9. *Clause 61.*—There has been a divergence of opinion in British India as regards the interpretation of this clause; some courts interpret it as abolishing consolidation of mortgages over different properties but leaving the doctrine untouched if the several mortgages be in favour of the same person and in respect of the same property, while other courts hold that the rule would equally apply to cases where the mortgages are on the same property. On principle we do not see why the same rule should not apply equally to cases of mortgages on the same property and of mortgages on more properties than one. “The words on property other than that comprised in the mortgage which he seeks to redeem,” and the illustration, cause confusion, and have accordingly been omitted.

10. *Clause 62.*—The words “or deposits in court as hereinafter provided” are omitted as superfluous. Tender includes deposit; and besides, there is no separate mention of deposit in clause 60.

11. *Clause 67.*—As the clause now stands it is not open to a usufructuary mortgagee who is only authorised to appropriate towards interest the rents and profits accruing from the mortgaged property to institute a suit for foreclosure or sale, in the absence, that is, of a contract to the contrary. This, we think, is inequitable besides being opposed to the practice hitherto prevalent in the State. We have therefore inserted the words “where he is authorised to appropriate the rents and profits in the payment of the principal money or partly in lieu of interest and partly in payment of the principal money” after the words “foreclosure or sale” in sub para (a) of paragraph 3 in order to confine the operation of the clause to these two kinds of usufructuary mortgages only (known in the vernacular as “Ili Bhogya”).

12. *Clause 81.*—Under the English Law the second mortgagee, even if he has notice of the first mortgage, is entitled to the benefit of the right to marshal. This was also the law in British India before the introduction of the Transfer of Property Act. We think that the rule enacted in the clause is too narrow, and that the equity which the subsequent mortgagee possesses in this respect should not be defeated by consideration of the fact or otherwise of any notice he may have had. As has been observed in I. L. R. 18 Bombay 150 (at page 167) “it seems reasonable that this equity should be enforced, both in cases of notice, and no notice, because to refuse so to enforce it would have the effect not only of enabling the first mortgagee to disappoint a subsequent mortgagee but also of frequently enabling the mortgagor to defraud such subsequent mortgagee.”

The doctrine of marshalling is generally extended to the case also of *bona fide* purchasers for value; but since the section as it stands does not provide for this, and since (as pointed out in 31 Madras 419 and 35 Bombay 391) clause 56 applies in terms only as between a seller and his buyer and not as between a mortgagee of the seller and the buyer we have added the following clause, *viz.*, “(2) The benefit of sub-section (1) applies *mutatis mutandis* to a person who purchases one of several properties previously mortgaged to another person.”

13. *Clause 95.*—This clause has been criticised as being unskillfully drafted and clumsily worded and as likely to be construed as applying only to cases of mortgages in which possession is obtained by the redeeming co-mortgagor. Their Lordships of the Privy Council have observed that it would be “more reasonable to construe the section distributively, to make the condition of obtaining possession apply only to the cases in which its fulfilment is, from the nature of the mortgage, possible, and in other cases to make the charge follow upon redemption.” Further, it is not merely a charge that the co-mortgagor who redeems can claim; he has a right to be treated as if he were an assignee of the mortgage. The word “expenses” is also not comprehensive enough to include the redemption-money, though there can be no doubt that the mortgagor who redeems should be entitled to the whole of his outlay. The section has accordingly been redrafted so as to bring these ideas into prominence and to obviate confusion.

14. *Clause 107.*—We have provided that the operation of this clause shall be subject to the proviso to Section 17 (b) of the Registration Regulation, since otherwise it would restrict the scope of the power of Government to grant exemptions under the proviso. In this connection it may, be noted that clause 107 is

one of the provisions which according to clause 4 should be read as supplemental to the Mysore Registration Regulation.

15. The other amendments in the Bill are merely verbal and call for no special remarks.

16. The portions of the Bill as amended by us may be published in the Gazette.

K. S. CHANDRASEKHARA AIYAR,
K. P. PUTTANNA CHETTY,
C. S. DORASWAMY IYER,
B. NARASINGA RAO,
H. NARASINGA RAO,
S. SEETHARAMAIA,
B. K. GARUDACHAR

**List shewing the Amendments made by the Select Committee
appointed to consider the Bill to amend the law relating to
the Transfer of Property by Act of Parties.**

[N. B.—The portions in square brackets are those deleted by the Select Committee and those in italics newly added.]

Clause 2.—

2. [The enactment specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But] Nothing herein [Repeal] contained shall be deemed to affect—
- Saving of certain enactments, incidents, rights, liabilities, etc. (a) the provisions of any enactment not hereby expressly repealed:
- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Regulation and are allowed by the law for the time being in force;
- (c) any right or liability arising out of a legal relation constituted before this Regulation comes into force, or any relief in respect of any such right or liability; or
- (d) save as provided by Section 57 and Chapter IV of this Regulation any transfer by operation of law or by or in execution of, a decree or order of a Court of competent jurisdiction:
- and *save as provided in Sections 13 and 14* nothing in the second chapter of this Regulation shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.

Clause 5.—

5. In the following sections “transfer of property” means an act by which a living person conveys property in present, or in future, to one or more other living persons, or to himself and one or more *other* living persons; and to “transfer property” is to perform such act.
- Transfer of property” defined.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property:
- Transfer for benefit of unborn person.

Provided that where a transfer as aforesaid is made by a person governed by the Hindu Law, the interest created for the benefit of a person not in existence at the date of the transfer shall take effect notwithstanding that it does not extend to the whole of the remaining interest of the transferor in the property.

A, not being a person governed by the Hindu Law, transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Clause 14—

14. (1) No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom if he attains full age, the interest created is to belong.

(2) *This section shall apply also to the transfer of property by persons governed by the Hindu Law.*

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage," "mortgagor"
"mortgagee," "mortgage-
money" and "mortgage deed"
defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and the interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage.

(c) Where the mortgagor ostensibly sells the mortgaged property—

Mortgage by conditional sale.

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the [mortgage-money] principal money, or partly in lieu of interest, and partly in payment of the [mortgage-money] principal money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary mortgage.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that

English mortgage.

he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage

59. (1) [Where the principal money secured is one hundred rupees or upwards]
 Mortgage [when] to be by assurance. A mortgage can be effected only by a registered instrument [signed by the mortgagor and attested by at least two witnesses.]

[Where the principal money secured, is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid, or except in the case of a simple mortgage) by delivery of the property.

In such areas as Government may by notification declare, a mortgage may be created by delivery to a creditor or his agent, of documents of title to immoveable property with intent to create a security thereon.]

(2) Notwithstanding anything contained in sub-section (1) of this section, a mortgage of immovable property in favour of a Bank may, in any area to which this provision may be extended by Government by notification in the official Gazette, be effected by delivery to the Bank or its authorised agent of documents of title relating to such property accompanied by a memorandum in writing, signed by the debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorised agent is delivered or transmitted by registered post within ten days of the delivery to the Bank as aforesaid of the memorandum to every registering officer within whose District or Sub-district the whole or any portion of such property is situated, or, where a special registering officer is appointed or designated by Government in this behalf, to such registering officer, and such registering officer shall thereupon file the copy in his Book No. 1.

Explanation.—“Bank” in this sub-section means an association or company with limited liability formed principally for the purpose of engaging on the business of banking, and registered under the provisions of the law relating to companies for the time being in force.

Clause 61.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of right to redeem one of [two a contract to the contrary, be entitled to do so without properties separately] several paying any money due under any separate mortgage mortgage [d]s. made by him, or by any person through whom he claims. [on property other than that comprised in the mortgage which he seeks to redeem.]

[Illustration.]

[A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.]

Clause 62.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property,—
 Right of usufructuary mortgagor to recover possession.

- (a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;
- (b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money [or deposits it in Court as hereinafter provided].

Clause 67.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, *where he is authorised to appropriate the rents and profits in payment of the principal money or partly in lieu of interest and partly in payment of the principal money*, or a mortgagee by conditional sale as such to institute a suit for sale: or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or
- (c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or
- (d) to authorize a person interested, in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

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Clause [75] 76.

Liabilities of mortgagee in possession. [75] 76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own;
- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, *and* all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in re-instating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the [mortgage-money] *principal-money* and, so far, as such receipts exceed any interest due, in reduction or discharge of the [mortgage-money] *principal-money*; the surplus, if any, shall be paid to the mortgagor.
- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under [this Chapter] *Order XXXIV of the Code of Civil Procedure, 1911*, be debited with the loss, if any, occasioned by his default.

Clause [80]. 81.

[80.] 81. (1) If the owner of two or more properties mortgages *all* of them [both] to one person and then mortgages [one] *some* of the properties to another person [who has not notice of the former mortgage] the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property or properties not mortgaged to the second mortgagee so far as such property or properties will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in [either] *any of the properties*.

(2) *The benefit of sub-section (1) applies mutatis mutandis to a person who purchases some of several properties previously mortgaged to another person.*

* * *

Clause [81]. 82.

[81.] 82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property; each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section [80] 81 to the claim of the second mortgagee or subsequent purchaser.

Clause [84] 91.

[84.] 91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—
Who may sue for redemption.

- (a) any person (other than the mortgagee of the interest sought to be redeemed), having any interest in or charge upon the property or any part thereof

- (b) any person having any interest in or charge upon the right to redeem the property ;
- (c) any surety for the payment of the mortgage-debt or any part thereof ;
- (d) the guardian of the property of a minor mortgagor on behalf of such minor ;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot ;
- (f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property ;
- (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property ;
- (h) *any other person who, in any other manner, may become entitled to any interest in the property or any part thereof.*

Clause [85] 95.

[85.] 95. Where one of several mortgagors redeems the mortgaged property [and obtains possession thereof] he [has a charge] *Charge of one of several co-mortgagors who redeems.* *acquires all the rights and privileges of the mortgagees on the share of each of the other co-mortgagors in the property for [his] co-mortgagor's proportion of the mortgage money and other expenses properly incurred in so redeeming and [obtaining possession] where he obtains possession of the property also, of the expenses properly incurred in so obtaining possession..* *in / that*

Clause [84] 100.

CHARGES.

[87]. 100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property ; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of Sections [80] 81 and [81] 82 shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

* * * *

Clause [90] 103.

[90]. 103. Where, under provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served *on or by*, or tender or deposit made, accepted or taken *by* the legal curator of the property of such person ; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage, to appoint a guardian *ad litem* for the purposes of serving or receiving service of, such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract ; and the provisions of Order XXXII of the Code of Civil Procedure shall, so far as may be apply to such application and to the parties thereto and to the guardian appointed thereunder.

* * * *

Clause [92] 105.

[92]. 105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, ^a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Lessor, lessee, premium and rent defined.

Clause [94] 107.

[94]. 107. Subject to the proviso to clause (d) of Section 17 of the Mysore Registration Regulation 1903, [A] lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

Leases how made.

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery or possession;

Provided that the Government may from time to time, by notification in the official Gazette, direct that leases of immoveable property, other than leases from year to year or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery or possession.

Clause [110] 123.

[110] 123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor [and attested by at least two witnesses]

Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Clause [124] 137.

[124]. 137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Saving of negotiable instruments, etc.

Explanation.—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

[The Schedule.

THE SCHEDULE.

Year and Chapter	Subject	Extent of repeal
THE SCHEDULE.		
Number and year	Subject	Extent of repeal
I of 1877.	Specific Relief	In Sections 35 and 36, the words “i writing.”

9)

From the Registrar, Chief Court.

No D. Dis 773 Dated 27th Feb 1917.

Forwards the opinion of the Judges
of the Chief Court on the report of the Select
Committee on the Transfer of Property Bill.

From Mr W. C. Rose.

Dt 17. 12. 1917.

Re. Sec. 59(2) of the Transfer of Property
Bill as amended by the Select Committee.

To Mr W. C. Rose No J 2175 Dt 19. 12. 17.

Informs him that he need not take the
ple to see the Chief Secy as the letter explains
situation very clearly.

From Mr W. C. Rose Dt 20. 12. 17.

Forwards the proceedings of the Conference
in India and Ceylon Chambers of Commerce
held in 1915.

To the Compiler, Mysore Gazette

No J 3806 Dated 15. 3. 1918.

Orders the publication of the
Regs. as Regs. IV of 1918.

A. R. Khan
21/5/1918